THE LICENSING SYSTEM FOR FISH BUYERS AND VENDORS:

A REVIEW OF PROVINCIAL ROLES AND RESPONSIBILITIES

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All opinions expressed in this report are solely those of the authors and do not necessarily reflect the view of the Aquaculture and Commercial Fisheries Branch of the Ministry of Agriculture and Fisheries.

CONTENTS

		Page
CHAPTER 1:	INTRODUCTION	1
CHAPTER 2:	LEGAL JURISDICTION AND ADMINISTRATIVE PRACTICE	6
	Constitutional Jurisdiction Over BC Fisheries	6
	1. General Principles	6
	2. Constitutional Jurisdiction Over Fish Buyers and Vendors	10
	Legislative Framework for Regulating Fish Buyers and Vendors	11
	1. Provincial Legislative Requirements	11
	2. Federal Legislative Requirements	15
	Role of Government Agencies in the Regulation of Fish Buying and Vending	16
	1. Review of Departmental Mandates	16
	2. Links Between Agencies	20
	3. Summary Comments	23
CHAPTER 3:	THE ROLE OF BUYERS AND VENDORS IN THE BC FISHING INDUSTRY	25
	Introduction	25
	The Buying Sector	26
	1. Shore Stations and Barges	27
	2. Vessels	30
	3. Trucks	31
	The Vending Sector	34
CHAPTER 4:	PRIMARY PURPOSE OF THE LICENSING SYSTEM	36
	Introduction	36
	Current Provincial Policy Respecting Buyer and Vendor Licenses	37
	Fish Buyer Licenses	38
	1. Public Health and Safety	38
	2. Administration of Commerce	41
	3. Fisheries Management	47
	4. Revenue Generation	48

CONTENTS continued

		Page
	Conclusions Respecting Primary Purpose of Fish Buyer Licenses	49
	Fishermen Vendor Licenses	51
	1. Public Health and Safety	51
	2. Administration of Commerce	52
	3. Fisheries Management	53
	4. Revenue Generation	54
	Conclusions Respecting Primary Purpose of Fishermen Vendor Licenses	54
CHAPTER 5:	REGULATING ILLEGAL SALES	56
	Introduction	56
	Sale of Fish Not Reported on Sales Slips	56
	Purchase and Sale of Indian Food Fish	59
	Purchase and Sale of Bi-Valve Shellfish Harvested from Closed Areas	61
	Sale of Bi-Valve Shellfish That Have Not Been Inspected at a Federally Registered Facility	62
	Sale of Unwholesome Fish Products by Fish Vendors	63
CHAPTER 6:	RECOMMENDATIONS	65
	The Buying Sector	65
	The Role of the Province in Regulating Buyers	65
	The Regulatory Scheme for Fish Buyers	66
	Inspection & Enforcement of Fish Buying Activities	69
	Assignment of Administrative Responsibilities for the Buying Sector	72
	Costs of Services and Who Should Pay For Them	73
	The Vending Sector	74
	The Role of the Province in Regulating Vendors	74
	Assignment of Responsibilities for Fish Vending	77
SELECTED BIBLIOGRAPHY		69

CONTENTS continued

Page

APPENDIX A: JURISDICTION AND ADMINISTRATIVE PRACTICE REGARDING FISH BUYERS AND VENDORS 80

APPENDIX B: OFFENSES RELATING TO FISH BUYING AND VENDING 83

EXECUTIVE SUMMARY

The Provincial Ministry of Agriculture and Fisheries initiated a review of their licensing systems for fish buyers and vendors with a view to defining their roles and responsibilities. The objective of this study is to provide the Ministry with recommendations concerning whether the government should or could withdraw from roles and responsibilities relating to fish buyers and vendors, and which activities should be carried out by different Ministries.

Information and data were gathered from personal interviews surveys of licensed fish buyers and fishermen vendors, and of officials of the provincial and federal governments and municipal health units. Fisheries legislation and regulations, constitutional case law, and a variety of background technical reports and policy documents were reviewed and catch statistics for licensed buyers were obtained from the Department of Fisheries and Oceans.

Constitutional jurisdiction, legislative authority, and administrative arrangements regarding licensing, inspection, and enforcement of the buying and vending sectors are described, supplemented by a description of the role and significance of buyers and vendors in the BC fishing industry. This background information provides the basis for an analysis of the primary purpose of the fish buyers and vendors licensing schemes, and of whether and how the Province should be involved in the regulation of various types of illegal fish sales.

The Province does have jurisdiction over the activities of fish buyers and vendors in the province, but some legitimate roles and responsibilities are not fulfilled, and duplication of effort and other problems arise, because of a variety of faults with the regulatory framework and lack of agreement on administrative arrangements.

462 licensed fish buyers handled 74 million pounds of salmon in 1987 with a landed value estimated at $104 million -- about one-half the total catch. Of the total value of salmon purchased by licensed buyers, 32% is accounted for by shore stations and barges, 64% by vessels, and 4% by trucks. Shore stations, barges, and trucks concentrated on troll caught coho, chinook, sockeye, and pink salmon; vessels primarily handled net caught sockeye, pink, and chum salmon. Truck

buyers purchased an additional 9 million pounds of shellfish worth almost $8 million. Figures for other species and buyers were not available.

Four purposes of the buyer and vendor licensing systems were identified that are defined in terms of seven aspects. The primary purpose of the licensing systems was differentiated by licensing/regulating, buyers/vendors, and buyers of finfish/-shellfish. We conclude that there are legitimate reasons for provincial involvement in all these licensing systems with the exception of licensing of fish vendors.

The Province has a clear interest in regulating four of the five types of illegal sales considered in this study: misreporting on sales slips, sale of bi-valve molluscs harvested from closed areas or not processed in a federally registered plant, and sales of unwholesome fish by licensed vendors. The Province's interest in regulating the illegal sale of Indian food fish is less clear.

With respect to fish buyers, we recommend that the Province, in particular the Ministry of Agriculture and Fisheries, continue to license, inspect, and enforce requirements for fish buyers, take the necessary steps to consolidate its licensing and regulatory bases, broaden their scope to include all persons who handle or transport fish, and ensure consistent and equitable enforcement of regulations affecting all fish buyers. License fees could be raised to finance the increase and improvement in enforcement. The Province should consider establishing separate licensing systems for shellfish buyers and for "transporters" who would be prohibited from engaging in any processing activities. They should continue to require the submission of sales slips from licensed buyers and consider the merits of collecting annual production reports from them as they do for licensed processors. Finally, through a consultative process, the Province should review the issue of product quality and explore the nature and extent of government involvement in this area in the future.

We recommend that the Province discontinue licensing fishermen vendors but continue to inspect and enforce regulations respecting retail fish sales for dockside sales. They should review these regulations to clarify in the regulatory base the applicability and appropriateness of applying them to dockside sales. Responsibility for inspecting those who sell fish to the general public should be placed on municipal health units under agreement with the Ministry of Agriculture and Fisheries.

CHAPTER 1:

INTRODUCTION

Governments often review the efficiency and effectiveness of their programs, but the provincial government of British Columbia is currently examining all of its programs not only in these regards but also in terms of their relevance. Earlier this year, for example, it was determined that fish inspection was primarily for reasons of public health and safety and the function was subsequently shifted from the Ministry of Agriculture and Fisheries to the Ministry of Health. The review of the relevance of programs is not limited to the question of the appropriate provincial Ministry to carry out particular programs, but includes also the question of whether the provincial government should be involved at all.

In this regard, the provincial government now wishes to review the licensing systems for fish buyers and vendors. Since the licensing function and its attendant costs and benefits are often difficult to distinguish clearly from the regulation of fish buyer and vendor activities, we have adopted the interpretation throughout this report that the "licensing system" refers not only to the licensing requirements found in the British Columbia *Fisheries Act*, but includes the structural and operating standards found in the provincial *Fish Inspection Act* and its regulations. Many references are made throughout this report to these statutes and regulations and to federal legislation and regulations covering related concerns. The reader should note that references in the text refer to provincial statutes and regulations unless otherwise specified.

The terms of reference for this study direct us to provide a general overview of provincial roles and jurisdiction in the buying and vending sectors of the provincial fishing industry. This is the subject of Chapter 2. The overview includes a review of federal roles and responsibilities to show the interaction between the two levels of government. A tabular summary of the responsibilities of government agencies based on constitutional jurisdiction, legislative authority, and administrative practice is presented in Appendix A.

Data for Chapter 2 were gathered in a personal interview survey of officials of the provincial government, including the Ministries of Agriculture and Fisheries, Health, and Environment and Parks. Federal government and municipal health officials were also interviewed. Constitutional principles were provided by a review of texts and case law.

Over the years, the provincial and federal governments have largely cooperated in the area of fisheries management. Perhaps the most visible signs of cooperation are the series of Agreements and Memoranda of Understanding defining the division of roles and responsibilities between the two levels of government. An important reason for such agreements is the cost and confusion that attend uncoordinated actions by management agencies. Our terms of reference, however, instruct us to provide the Ministry of Agriculture and Fisheries with as clear an indication as possible of their legal responsibilities. They wish to understand what they are required to do as opposed to what they might do in the context of a cooperative agreement. This view was upheld in our interviews with senior Ministry staff. The purpose of this study, from their point of view, is to assist in the formulation of an appropriate response to the philosophy and policy of de-regulation that has been elaborated by the incumbent provincial government. To fulfil our terms of reference, we have had to largely ignore the history of cooperation between the two governments. Thus, some of our statements and conclusions may seem out of context and to deny the existence of various federal-provincial agreements, but this is a necessary consequence of the nature of this study. The objectives of this study should be kept firmly in mind when interpreting our conclusions and recommendations.

Answers to the questions that motivated this study were determined only in part by the general overview of jurisdiction, legal responsibility, and administrative arrangements. An understanding of the activities of buyers and vendors in the British Columbia fishing industry, and the significance and changing dynamics of their behaviour, are also important to judge the appropriate regulatory response. This analysis is presented in Chapter 3.

Data for Chapter 3 were gathered in a personal interview survey of fish buyers and vendors. Fourteen companies operating shore stations and barges were interviewed; their operations include 30 fish buying stations of these types. Fourteen truck buyers with a total of 36 trucks in operation were also interviewed. Ten

fisherman vendors were interviewed. Important information and professional opinions were also gathered in interviews of government officials and industry participants. Historical perspective on the buying and vending sectors was provided by a review of background documents and reports. Information from them is referred to throughout the report and they are fully cited in the bibliography.

Data on throughput of licensed buyers was derived from the Department of Fisheries and Oceans 1987 Catch Statistics Database. Weight and value of salmon purchases by species and gear is presented for shore stations and barges, vessels, and trucks. Weight and value of shellfish purchases is presented for truck buyers only. Data on shellfish purchases for other types of buyers, and on purchases of other species by all types of licensed fish buyers, were not available due to the manner in which sales slips were coded into the database, which did not allow the data to be retrieved.[1]

This report is primarily intended to provide the Ministry of Agriculture and Fisheries with *"recommendations pertaining to which roles and responsibilities should be carried out by different provincial ministries and ... whether the provincial government could or should withdraw."* It is a policy paper rather than an analytical report. To this end, and because we were asked to provide our professional opinion, based in part on the information we collected during this assignment, we have not documented each and every statement nor cited the source of every piece of information. To do so would have over-burdened the study with footnotes and rendered it highly unreadable as a policy paper.

Chapters 2 and 3 provide the background information necessary to conduct the policy analysis that forms the core of this assignment. Based on our understanding of the roles and responsibilities of public sector departments and agencies and the structure and significance of the fish buying and vending sectors, in Chapter 4 we approach the question of the primary purpose of the fish buyer and vendor licensing systems. Recall that we include both licensing and regulating in the definition of licensing system.

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[1] We understand that sales slip coding will be changed in 1988 so that transactions in all species by all licensed fish buyers will be able to be retrieved from the database.

Our approach was first to identify candidate purposes and then to reason through their relevance and importance to the mandate and interests of the provincial government.

In defining these candidate purposes, however, we quickly found that there is more than one aspect to each and that certain aspects are included in more than one purpose. In all, we identified four candidate purposes and seven aspects of those purposes. These we consider to identify primary purpose for each of four cases: licensing fish buyers, regulating fish buyers, licensing fish vendors, and regulating fish vendors. Further, we found it necessary to distinguish between buyers of finfish and buyers of shellfish.

We were specifically requested to consider the matter of whether and how to regulate illegal fish sales and to comment on whether the province has a legitimate role in such activities. Here again, we use the background information presented in Chapters 2 and 3 as a basis for deducing the answers to these questions. They are presented in Chapter 5.

Finally, our conclusions and recommendations are presented in Chapter 6. Some general conclusions are described first, followed by specific recommendations on the buyers sector and the vendors sector, which are discussed separately. Without overburdening the exposition, we have tried to elucidate the train of logic that led us to our recommendations. We make numerous references to material presented in Chapters 2 through 5, to which the reader can refer should further explanation of the rationale for our recommendations be required.

There has been a great deal of controversy lately about fish buyers, especially the impact of truck buyers on other segments of the buying/processing sector. Although our study does not address this issue directly and we do not profess to have resolved the problems, we hope to have illuminated them somewhat and to have provided some useful suggestions on how the situation might be improved.

Along similar lines, certain issues were expressly identified in our terms of reference as topics for further study that were not to be addressed in this report. Three Issues for Further Study were identified by the Ministry of Agriculture and Fisheries.

1. Review how provincial fisheries policy is implemented through the instrument of licensing processing plants, buyers and vendors, regulating truck buyers, etc. Issues such as processing at sea and the export of unprocessed fish should be addressed from a policy perspective.

2. Identify the role that Provincial Fish Inspectors could play with respect to regulating and enforcing new alternative measures that could be introduced in response to the recent GATT Panel finding concerning the Federal export restrictions on sockeye/pink salmon and roe herring.

3. Identify the relationship of the Fish Inspection Program to other Ministry programs and objectives for the food processing industry.

A final note on terminology. Throughout this report, the word "fish" should be taken to mean all species. Where references are made to finfish, shellfish, or some subset of these groups such as bi-valve molluscs, the reference will be explicit. Similarly, fish are "caught" when they are taken out of the water and put on the deck of a boat or the side of a stream; they are "landed" when they arrive on *terra firma*. Only licensed vendors can "vend" fish, but anyone can "sell" fish.

CHAPTER 2:

LEGAL JURISDICTION AND ADMINISTRATIVE PRACTICE

To describe the role of the province in matters relating to fish buyers and vendors, it is first necessary to outline the extent of provincial jurisdiction over these aspects of fisheries management. Having identified the areas in which the province has the ability to enact laws, the next task is to identify the extent to which the province has enacted legislation and initiated program activities in these areas.

This chapter defines the current role of the province in dealing with fish buyer and vendor activities in terms of constitutional jurisdiction and the resulting legislative framework and program activities.

Constitutional Jurisdiction Over BC Fisheries

1. General Principles

In this chapter, the word "jurisdiction" refers to the authority of a sovereign power to legislate, and to the limits or territory within which that authority may be exercised.

Canada's constitution assigns jurisdiction over "*seacoast and inland fisheries*" to the federal government. Although the federal government appears to have complete authority to manage Canada's fisheries resource, the province does have a number of powers and areas of jurisdiction that directly affect the fisheries resource in important ways. The following discussion focuses on the provisions of the Canadian constitution and constitutional history[1] to establish the full scope of provincial jurisdiction over fish buyer and vendor activities.

[1] Constitutional history refers to events and documents leading up to Confederation, and to judicial review and interpretation of these events.

The legal principles that establish provincial jurisdiction over fisheries management, inspection, and enforcement at the harvesting, transportation, processing, distribution, and retail stages are outlined in this section.

Controlling Access to the Resource

The right to fish in non-tidal waters is controlled by the owner of the bed of these waters. The right of the Province to license fishing derives primarily from its proprietary interest in the solum.[2] The subaquatic lands underlying freshwater lakes and rivers and tidal areas within bays, inlets, and estuaries, and the tidal foreshore between high and low water marks are part of the provincially controlled property base. The Province, therefore, has the jurisdiction to control or alter the right to fish in non-tidal waters as an incident of its property ownership of the solum.

Provincial jurisdiction in this area is fortified by section 92 of the *Constitution Act*, 1867 which gives a province legislative power over property and civil rights, and over matters of a local and private nature within the province. The Province also has the legislative power to impose the obligation to obtain a license to raise revenue for provincial purposes.

In practical terms, the Province has the jurisdiction to license, lease, or otherwise dispose of fish in non-tidal waters. Included in this discretionary power is the ability to prohibit the activity in question. The Province also has the jurisdiction to impose a variety of terms and conditions in these licenses or leases, including a "*tax by way of license as a condition of the right to fish*."

While the Province also owns subaquatic lands in tidal waters, all resulting property rights in these fisheries are subject to an over-riding public right of fishery. At common law, the right of fishery in tidal waters was a right open equally to all Canadians. This public right prevails over any private rights of fishery that may arise by virtue of ownership of the solum. At common law, harvesting shellfish was also considered to be "fishing", and the public right of fishing allowed persons to enter into intertidal areas, even if owned by or granted to an individual other than

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[2] "Solum" refers to the bed of a river of lake. Our courts have affirmed provincial ownership of the beds of most lakes, rivers, and other waters within the boundaries of the province.

the person harvesting, to remove the shellfish. The federal government has the jurisdiction, in a fiduciary capacity[3], to regulate the exercise of these public rights in tidal waters.[4]

Conserving the Resource

As a general rule, the power to control production or harvesting of a resource rests with the government which owns or controls the resource. At common law, the grantor of a lease or license could impose conditions relating to the kinds of fish to be taken, their numbers, the days and times they were to be taken, and the methods by which they were to be taken.

In Canada, provincial rights and powers over non-tidal fisheries remain subject to an over-riding federal jurisdiction over conservation of the resource.

The fisheries conservation responsibility of the federal government stems from Parliament's legislative authority over "*seacoast and inland fisheries*" as set out in section 92(12) of the *Constitution Act*, 1867. Federal jurisdiction does not extend to other aspects of non-tidal fisheries, such as the allocation of fish among user groups or individuals.[5]

Under the constitution, provinces have the power to make laws respecting the management, use, and sale of water, forests, land, and minerals. Provincial decisions respecting water use, waste disposal, mining, and forestry have direct impacts on the conservation of non-tidal fisheries. The province also has the jurisdiction to protect its property interest in fish, subject only to federal conservation goals.[6]

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[3] "Fiduciary" capacity refers to someone who exercises authority on the basis of confidence or trust, rather than by right.

[4] Legislative approaches to shellfish are not entirely consistent with this statement; in fact, the province controls oyster picking, an arrangement supported by the federal *Fisheries Act.*

[5] Provincial jurisdiction in non-tidal waters extends to all classes of fisheries and to all species in these waters.

[6] In the event of a conflict between federal and provincial schemes to conserve fisheries, the federal scheme would prevail. The Province could impose more stringent conservation measures.

Caught Fish

Once fish are caught they are reduced into the private possession of, and are the property of, fishermen as a commodity. The handling and transport of fish caught in waters within provincial boundaries are subject to Provincial jurisdiction. The federal government has comparable jurisdiction over the handling and transportation of fish caught in tidal waters outside provincial boundaries.[7] These principles apply equally to the post-harvest handling of wild and cultured fish.

Once caught fish are transported within provincial boundaries, dual jurisdiction begins over the handling, transportation, and processing of both wild and cultured fish. Dual jurisdiction exists in the sense that the province has regulatory authority over all fish processed within the province, while the federal government has an interest in those fish destined for markets outside the province.

The subject of trade processes by which fish, whether originating in the wild or in an aquaculture operation, are converted into a marketable commodity, as well as rights over fish as an article of commerce, are within provincial legislative authority. The exercise of these property rights together with related product quality and public health concerns may be controlled by the Province by virtue of its authority over property and civil rights within the province as set out in section 92(13) of the *Constitution Act*, 1867.

As a general rule, legislation governing the terms and conditions of processing or sale of the commodity are outside the scope of the federal government, unless the commodity is destined for export outside the province. The federal power over trade and commerce under the constitution extends to international and interprovincial trade.

Retailing Fish and Fish Products

The Province has extensive authority over health and product quality as a local or private matter under section 92(16) of the *Constitution Act*, 1867. The manufacture

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[7] *Fish Canneries Case [1930] AC 111 BC* established federal jurisdiction over "D" licensed packer vessels on the basis that these activities are a logical extension of harvesting activities; the conveyance of fish from fishing grounds to land is regarded as part of the business of fishing.

and sale of fish and fish products can also be regulated by the Province as coming within property and civil rights in the province. The Province may regulate product quality (grade names and standards, compositional standards) for all fish destined for manufacture and sale within the province.

Federal power over public health stems primarily from the "peace, order and good government" clause of section 91 of the *Constitution Act*, 1867, but would be limited to problems that have attained a national dimension or where an emergency exists. Federal power over the criminal law under section 91(27) is also used to punish conduct that is dangerous to health. Relying on its criminal law power, the federal government can also impose labelling and packaging standards as a means of providing consumer protection against fraudulent sales of fish and fish products. The federal government also has the authority, pursuant to its power in relation to trade and commerce, to impose a broad range of product quality standards for fish and fish products destined for export.

2. Constitutional Jurisdiction Over Fish Buyers and Vendors

The Province has primary jurisdiction over the fish buying/processing sector in British Columbia, and over all vendors selling fish or fish products within the province. The jurisdiction begins once the fish are caught and transported within provincial boundaries, and continues through all stages of handling, storage, transportation, processing, and retail sale. Provincial jurisdiction extends to public health and product quality concerns associated with fish and fish products sold within the Province.

With respect to fish buyers, the federal government has the jurisdiction to regulate handling and transportation of fish until the point at which the fish are landed[8]; thereafter, federal jurisdiction over handling, transportation, and processing of fish occurs only where they are destined for export markets. The federal government would also have an interest in the use of federal docks by buyers for unloading fish.

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[8] Federal jurisdiction over fish until landed arises as a result of the need to require fishermen to make appropriate statistical returns.

With respect to fish vendors, the federal government has an interest in these transactions only in so far as certain retail transactions take place on federally maintained facilities, and the transactions may involve the sale of fish prohibited by the federal *Fisheries Act* and regulations.

Legislative Framework for Regulating Fish Buyers and Vendors

1. Provincial Legislative Requirements

Fish processors, buyers, and vendors are currently licensed under the authority of the *Fisheries Act*, while structural and operational requirements for these licensed facilities fall under authority of the *Fish Inspection Act*.

Licensing Fish Buyers

The term "fish buyer" is something of a misnomer since the business of fish buying refers not to a commercial retail transaction, but to the activity of "*buying, collecting, assembling, eviscerating, transporting, conveying, packing, or carrying fish*." While fish buying may involve the actual purchase of raw product from fishermen, in many cases the activity referred to is the handling and transportation of fish between fishing grounds and processors. However, by definition of "*fish buying station*" in section 12 of the *Fisheries Act*, a fish buyer may also engage to a limited extent in processing or "*eviscerating*" activities.

Provincial requirements regarding fish buyers apply in most cases to the first recipient of commercially caught fish in the post-harvest phase. Section 13(2) of the *Fisheries Act* requires the licensing of all handling and transportation activities involving the use of vehicles, vessels, barges, and shore stations where fish are acquired direct from fishermen. Buyers licenses are issued annually, and are not transferable.

There are a number of exceptions to the general rule of licensing the first recipient of commercially caught fish. Where commercial fishermen engage not only in harvesting, but also in the post-harvest handling and transportation of their catch, no fish buyers license is required. Processing establishments are automatically licensed buyers where fish are purchased direct from fishermen at a duly licensed

plant. However, when a processor uses a vehicle, vessel, barge, or shore station to collect or handle fish, a fish buyers license is required. Where fish are purchased from a fisherman for personal consumption or direct retail sale to the public, no buyers license is required.

The words "*direct from a fisherman*", found in section 12 of the Act, are significant since they limit license requirements to activities in the commercial fishing sector. The operator of a fish buying station may only acquire commercially caught fish, since by definition under the *Fisheries Act* (Canada), "fisherman" refers to a person licensed for commercial fishing. Persons who engage in the handling and transportation of fish originating from an aquaculture operation are not currently required to obtain a fish buyers license.

Provincial licensing requirements extend to all fish buying activities occurring "*within the Province or its coastal waters.*" Coastal waters are defined in section 12 of the Act as "*the waters in the fishing zones of Canada adjacent to BC, all waters in the territorial sea of Canada adjacent to BC, and all internal waters of BC.*" While this definition of coastal waters casts a wide net of provincial jurisdiction, a more conservative interpretation, also in keeping with the views of the courts, is that provincial jurisdiction extends to most lakes, rivers, and other waters within the boundaries of the province.[9] The location of provincial boundaries along the coastline has been the subject of a number of cases, with the result that provincial jurisdiction now extends to the tidal foreshore between high and low water marks[10], and the seabed of inland waters, including bays, harbours, and estuaries.[11] "*Inland waters*" have been described by the courts as those waters "*within the jaws of the land*" and specifically include the Strait of Georgia, the Strait of Juan de Fuca, and Johnstone Strait.[12]

The *Fisheries Act* attaches two reporting requirements to licenses issued under the Act. Section 20(1) of the *Fisheries Act* requires every holder of a fish buyers license

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[9] Note that "*public harbours*" are an exception, being the property of the federal government by virtue of section 108 and the *Third Schedule of the Constitution Act*, 1867.

[10] *Attorney General of BC v CPR*, (1906) AC 295.

[11] *Reference re. Offshore Mineral Rights (BC)* (1967) 62 WWR 21.

[12] *Reference re. Strait of Georgia* (1984) 8 DLR (4th) 161.

to keep a record of the operations of the business covered by the license, and to make a detailed annual report to the provincial Minister. Section 20(2) requires the regular submission of fish slips. Part 7 of the *Fisheries Act Regulations* and Schedule VI under these regulations set out the forms that are to be used in this regard –different forms are required for cash purchases, for booking fish, and for purchases of roe-herring and clams –and require all records to be submitted by licensees to the federal Department of Fisheries and Oceans.

Part 5 of the *Fisheries Act Regulations* requires that all licenses to operate a fish buying station be kept on the premises, and be produced at the request of an inspector of fisheries.

The *Fisheries Act* re-inforces the requirement to obtain a fish buyers license, and to report information as required, with a variety of penalties. The Minister may suspend or revoke a license pursuant to section 18, or refuse to further license under section 19 of the *Fisheries Act* where a licensee has violated any provision of Part 3 of the Act pertaining to license requirements. By definition, licensees are limited to activities involving commercially caught fish. A detailed list of offenses can be found in Appendix B of this report.

Regulation of Fish Buyers

Provincial structural and operational requirements for licensed fish buying stations, including trucks, vessels, barges, and shore stations, can be found in the *Fish Inspection Act* and regulations under the Act.

Section 23 of the *Fish Inspection Regulations* states that a fish buyer's license may be issued by the Minister only where the establishment meets the requirements of Schedule E of the *Regulations*. Schedule E sets out the handling, storage, and transportation standards for boats, vehicles, shore stations, and barges used in the business of buying and transporting fish. Although it is unclear whether the power to suspend or revoke a license under section 19 of the *Fisheries Act* could be used where the station has failed to comply with the standards outlined in Schedule E of the *Regulations*, it would appear that a fish buyers license could be cancelled upon conviction of an offence under the *Fish Inspection Regulations* by virtue of section 23(4).

Licensed buyers are also subject to general prohibitions on the processing and sale of "unwholesome" fish and on the sale of unprocessed bi-valve molluscs. An implicit assumption in the regulations is that compliance with Schedule E requirements will ensure wholesomeness of fish and fish products.

The regulatory scheme for fish buyers provides for a variety of penalties. Product detention action is available to provincial inspectors under section 8 of the *Fish Inspection Act*; all items seized are automatically forfeit to the Crown on conviction of an offence under the *Fish Inspection Act* and regulations under the Act. For a full list of offenses, refer to Appendix B.

Licensing Fishermen Vendors

Fishermen selling their own catch directly to the public are required to obtain a fisherman's vending license under section 13(4) of the *Fisheries Act*. The license is issued only to persons licensed under the federal *Fisheries Act* for commercial fishing.

The term "vending license" is misleading since not all fish vendors are required to obtain such a license. Fish sales by non-fishermen vendors do not require a vendors license under provincial fisheries legislation.

A commercial fisherman is permitted to dress, ice, or freeze his own catch; a vending license allows him to sell it to the public. The actual transaction can occur over-the-side from any commercially licensed fishing vessel, including a "D" licensed packer vessel operated by the commercial fisherman holding the vending license, or off the back of a vehicle also operated by the fisherman.

Section 20(4) of the Act requires fishermen vendors to keep and submit fish sales slips, and to produce the record on demand by a provincial inspector or a conservation officer. Part 6 of the *Fisheries Act Regulations* sets out the form to be used (Schedule V), and requires the submission of the information to the Department of Fisheries and Oceans.

Failure to obtain a vending license and pay the required fee, or to submit the required information, is an offence under the *Fisheries Act* and subject to penalty. See Appendix B for particulars in this regard.

Regulation of Fishermen Vendors

Structural and operational requirements are not specifically set out in provincial legislation and regulations. However, all sales to the public are regulated by the *Fish Inspection Act* and regulations under the Act. Section 24 of the *Fish Inspection Regulations* prohibits the sale of fish or fish products to the public unless the requirements of Schedule F are met. Schedule F sets out the structural and operational standards for retail fish outlets.

It is unclear whether "itinerant sales"[13] such as those made over-the-side of vessels or from the back of a vehicle constitute a "retail fish outlet" as contemplated in the *Regulations*, since the legislation does not define a "retail fish outlet." The view of provincial fisheries officials has been that Schedule F requirements are applicable to all retail transactions involving fish and fish products, including itinerant sales. Provincial health officials tend to view itinerant sales in a separate category from retail outlet sales.

Provincial inspectors have the authority under the *Fish Inspection Act* to inspect all fish products sold or offered for sale under section 6 of the Act. Inspectors may also take product detention action under section 7 of the *Regulations* for the purpose of preserving the identity of the fish pending satisfaction that the fish meet the standards imposed by Schedule F. The Minister may cancel a license under section 6 of the Fish Inspection *Regulations* where any serious contamination is present in the establishment.

2. Federal Legislative Requirements

The provincial regulation of fish buying and vending encompasses a broad range of post-harvest activities. The federal government has also imposed regulatory requirements on a number of these activities. Federal jurisdiction in the post-harvest phase stems from its authority in the areas of fisheries management and international trade and commerce. Harvesting activities are viewed by the federal government as including the handling and transportation of fish until they are

[13] Itinerant sales refer to transactions that occur from place to place, rather than from a fixed, established location.

landed. Federal jurisdiction in this area is reinforced by the fact that these activities occur, in many cases, outside provincial boundaries, but within the area over which the federal government has authority – the 200 mile zone.[14] Once fish are landed, the federal government retains jurisdiction over handling and transportation activities only where the fish are destined for markets outside the province.

Section 18 of the *Fish Inspection Regulations* (Canada) prohibits the use of vessels for fishing or for transporting fish without proper certification to ensure compliance with Schedule III requirements respecting storage and handling practices on vessels. Vessel certification is required prior to issuance of a vessel license by the Department of Fisheries and Oceans. All vessels used solely in packing, freezing, and transporting fish are issued a "D" license.

Sections 20 and 21 of the federal *Regulations* require all fresh fish unloading sites and transport vehicles (where fish are intended for processing and export) to meet construction, equipment, and operation standards set out in Schedule V of the *Regulations*.

Role of Government Agencies in the Regulation of Fish Buying and Vending

1. Review of Departmental Mandates

A number of government agencies play a role in the regulation and control of fish buying and vending activities in the province of British Columbia. This section outlines the mandates of the various departments involved, and discusses the interlinking responsibilities among these agencies in terms of the issuance, inspection, and enforcement of buyers and vendors licenses.

[14] The three nautical mile zone establishes the territory subject to proprietary control by the federal Crown. The 200 mile zone refers to a wider area over which Canada extends its legislative authority for fisheries.

Provincial Agencies

The general mandate of the Ministry of Agriculture and Fisheries lies in the promotion of competition and economic efficiency within the buying/processing sector. Equally important is the role of the Ministry in ensuring that product quality standards are maintained as a means of encouraging long term viability of the industry.[15]

To these ends, the provincial Ministry of Agriculture and Fisheries has primary responsibility for licensing and inspecting fish buying and vending activities within the province under Part 3 of the *Fisheries Act*. The final approval of all license applications is at the discretion of the Minister. Provincial policy with respect to licensing has essentially been *laissez-faire*. Virtually all applicants have been granted licenses, and the fees for and conditions of the licenses have been minor. Restrictions on entry do exist, since buyers licenses are restricted to Canadian citizens and landed immigrants. However, restrictions on foreign investment in the fish buying/processing sector were removed in 1980.[16] Provincial inspectors of fisheries have the authority under the *Fish Inspection Act* to inspect all fish and fish products through the stages of handling, storage, transportation, processing, and sale to the public.

As of April 1988, the majority of food inspection programs in the provincial government are administered by the Ministry of Health. This includes inspection of provincially licensed fish processing plants, as well as fish retail outlets. The Ministry of Agriculture and Fisheries will continue to license fish processing facilities under Part 3 of the *Fisheries Act*, and the Ministry of Health will be responsible for conducting inspections to ensure compliance with the structural and operational standards imposed by the *Fish Inspection Act* and regulations. In addition, the Ministry of Health is responsible for ensuring that retail fish outlets are complying with Schedule F requirements. At this time, the inspection of fishermen vendor activities in this regard appears to have remained the responsibility of the Ministry of Agriculture and Fisheries.

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[15] British Columbia, 1980.

[16] British Columbia, 1980, p. 7.

While the Ministry of Agriculture and Fisheries' primary mandate is to promote the development and growth of the fishing industry and its various sectors, the Health Ministry's mandate is to oversee all health and food safety matters in the province. The Ministry of Health does not consider the question of product quality, over and above the basic health and food safety standards, to be included in this transfer of responsibility.[17]

In dealing with retail fish outlets, administrative responsibility rests in many cases with health units throughout the province. These units function independently of the Ministry of Health, reporting instead to local Boards of Health. Municipal health units administer the BC *Health Act* and regulations and are generally responsible for the protection of the health and safety of the general public.

Conservation officers have ex-officio power to enforce the provisions of the *Fisheries Act*. However, the Ministry of Environment and Parks has no mandate to deal with buyer and vendor activities within the province at this time.

Federal Agencies

The Department of Fisheries and Oceans has no direct mandate to deal with buying and vending activities in British Columbia; however, its mandate with respect to conservation of the resource and regulation of the fishing industry has indirect impacts on these activities.

The *Fisheries Act* (Canada) provides general authority to regulate both marine and freshwater fisheries to ensure that the primary conservation mandate is met. The Act and its regulations also establish a regulatory scheme designed to ensure orderly industry practice in tidal waters, licensing both individuals and vessels, and stipulating methods of fishing. Licensing, allocation, and fisheries enforcement are handled by the Fisheries Branch of the Department.

The (Commercial) Licensing Division issues all harvesting licenses to fishing vessels, including packer vessels, and all personal commercial fishing licenses. Many of the restrictions placed on individuals, either by way of regulation or by conditions attached to licenses, are necessary to ensure an equitable allocation of

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[17] Confidential interviews with Health officials.

the resource among user groups and are incidental to meeting the Department's conservation goals.

The Conservation and Protection Division oversees the enforcement of all federal fisheries regulations in tidal water fisheries. By agreement[18], the Province of British Columbia administers and manages the fishery in non-tidal waters, with the exception of anadramous salmon. Salmon in non-tidal waters remain the responsibility of the federal government.

The *Fish Inspection Act* (Canada) provides the Inspection Branch of the Department with the authority to register fish processing facilities, and to regulate standards for these facilities where fish or fish products are destined for markets outside the province. The Inspection Branch also has responsibility for ensuring compliance with handling, storage, and transportation standards governing vessels and vehicles that deliver to federally registered fish processing facilities.

In addition, the Department of Fisheries and Oceans provides moorage facilities and services to commercial fishing vessels. Commercially licensed vessels, including packer vessels, are accorded priority status at these facilities; recreational and transient boats are also accommodated. The Small Craft Harbours Branch of the Department has authority to regulate activities that may endanger other vessels or harbour structures, and to ensure that facilities are operated efficiently.

Moorage facilities are also provided by the Department of Transport, although the primary mandate of the Harbours and Ports Division of the Canadian Coast Guard is somewhat different from that of Fisheries and Oceans. Fisheries and Oceans' primary mandate is to provide facilities and services to commercial fishermen. The Department of Transport has a broader commercial mandate to provide wharf facilities for the general movement of goods and people.

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[18] This agreement refers to a 1901 *modus vivendi* agreement whereby the province agreed to administer anadromous sport fish (steelhead) and all freshwater fisheries, while the federal government retained administration of anadromous commercial fish (salmon) in non-tidal waters.

2. Links Between Agencies

Licensing

Buying and processing facility licenses are issued annually upon receipt of the appropriate fee and on condition that the facility meets all appropriate requirements of the *Fish Inspection Act*. The administration of licensing and inspection of these facilities was, until recently, the responsibility of the Aquaculture and Commercial Fisheries Branch of the Ministry of Agriculture and Fisheries. Currently, the Ministry of Health has responsibility for inspecting processing facilities prior to the issuance of the license by the Ministry of Agriculture and Fisheries.

Because of resource constraints and to avoid duplicating inspection programs, the provincial role of inspecting fish buyer license applicants is almost entirely deferred to the federal government with respect to vessel inspections, and partially deferred with respect to inspections of vehicles, barges, and shore stations.

As a matter of practice, the Province will issue a fish buyers license to a vessel only if the vessel has passed federal vessel inspection. The Inspection Division of the Department of Fisheries and Oceans inspects and approves the fish holds of all commercially licensed fishing vessels, including packer vessels. If the hold does not meet the requirements of Schedule III of the *Fish Inspection Regulations* (Canada), a federal vessel license will not be issued. Vessels passing federal inspection are issued up to a four-year pass, depending on the condition of the boat. The status of all commercially licensed vessels under the federal vessel inspection program is made available to the Ministry of Agriculture and Fisheries.

Currently, the Ministry of Agriculture and Fisheries conducts approximately 50% of the inspections of truck buyer applicants, relying on federal inspections for compliance information for the remaining 50% of applicants. Practice with respect to vehicle inspections is to coordinate federal and provincial inspection dates and locations. Vehicles that deliver fish to federally registered processing facilities, which make up over 75% of the total number of processing facilities in the province, are checked by the Inspection Branch of the Department of Fisheries and Oceans to ensure compliance with Schedule V of the *Fish Inspection Regulations* (Canada). Vehicles are given a one-year pass by the Department of Fisheries and

Oceans. Where appropriate, the Ministry of Agriculture and Fisheries requires proof of the federal vehicle inspection to be included in the truck buyer license application. Truck buyers, knowing that they need proof of inspection prior to being issued a buyers license each year, take the initiative and approach either the federal or provincial authorities to get their vehicle inspected.

Provincial licenses to operate fish buying stations are also issued to shore stations and barges. These establishments are required to conform to both provincial requirements –Schedule E, *Fish Inspection Regulations* –and federal requirements where the fish are intended for export. Past practice was to coordinate federal and provincial inspection of these license applicants. Currently, although no formal joint inspection program exists, both levels of government conduct inspections of barges and shore stations. The Inspection Division of the Department of Fisheries and Oceans inspects unloading sites, including shore stations or "fish camps" to which Schedule V, *Fish Inspection Regulations* (Canada) requirements apply, and produces an inspection report. A copy of the report is sent to Agriculture and Fisheries, along with recommendations in some cases that the Province withhold the buyers license until problems are corrected.

Compliance Monitoring and Enforcement

As a general rule, compliance with structural standards is checked prior to issuance of fish buyer licenses. The Ministry is also responsible for ensuring operational standards are met by each license holder. These operational standards are primarily designed to protect public health and safety, and promote product quality.

All inspection and enforcement activities within the Ministry of Agriculture and Fisheries are carried out by provincial inspectors appointed under the *Fisheries Act* and the *Fish Inspection Act*. Conservation officers employed by the Ministry of Environment have the power, but no mandate, to deal with these Acts. Where illegal sales of fish are detected, conservation officers turn the case over to the Ministry of Agriculture and Fisheries as soon as possible.

The Ministry of Agriculture and Fisheries conducts spot checks to ensure compliance with operational standards. Recent losses of manpower resources due to the transfer of certain inspection responsibilities to the Ministry of Health confine these inspection activities mainly to spot checks of barges and shore stations. The

mobility of both vessels and vehicles makes routine inspection of these facilities more difficult, given current resource constraints. Similarly, no routine inspection program is in place to monitor the activities of fishermen vendors; here, the Ministry of Agriculture and Fisheries confines its activities to responding to complaints from the public or other industry participants.

Federal fish inspectors have *ex officio* status to enforce provincial fisheries legislation. However, the routine inspection of fish buying stations and retail fish outlets is regarded as a provincial responsibility, and the Inspection Division has made no formal commitment to undertake the routine inspection and enforcement of provincial buyers and vendors. The federal Inspection Division inspects fish buying stations, such as shore stations, barges, vehicles or vessels, if those facilities deal in fish that are destined for export markets. Where a violation is detected, the Department of Fisheries and Oceans relies on its authority under federal legislation to detain products, to refuse to issue the required export certificate, or in some cases to lay charges. Violations of provincial requirements are reported, in most cases, to the Ministry of Agriculture and Fisheries for action by provincial authorities.

Fish retail establishments are required to comply with the operational and product quality standards set out in Schedule F of the *Fish Inspection Regulations*. Although the Ministry of Agriculture and Fisheries has the lead responsibility for inspection and enforcement of these standards, the Ministry relies on a number of agencies in detecting Schedule F violations.

Sanitation standards in both restaurants and retail outlets are a concern of the Provincial Ministry of Health. In many cases, either provincial health inspectors or municipal health units are relied on to inspect local establishments. Municipal health officials have no authority to take action under provincial fisheries legislation, but in most cases municipal by-laws provide parallel authority to take whatever steps are necessary to resolve a clear health hazard.

In the past, information about compliance with Schedule F requirements has been received from federal inspectors working for the Department of Consumer and Corporate Affairs. Although a number of these federal officials have *ex officio* status as provincial inspectors for the purposes of enforcing Schedule F of the provincial *Regulations*, as a matter of practice federal officials take action only

where product misrepresentation is detected. Federal inspectors rarely detain fish or fish products in these instances, but they do lay charges under the *Fish Inspection Act*. Where product quality or safety of the fish product is in question, federal inspectors usually refer the case to a provincial or municipal health inspector.

Vessels being used in the sale of fish and fish products to the public have traditionally been regarded as retail fish outlets subject to Schedule F requirements. Fishermen selling their own catch under a vending license would fall into this category. Inspection of vessels after the issuance of a license is sporadic, motivated by complaints from the public or other fishermen vendors. While many of these boats use federal facilities operated either by Fisheries and Oceans or the Department of Transport, neither department has the jurisdiction to directly regulate the sale of fish. In most harbours, the Small Craft Harbours Branch of Fisheries and Oceans is not primarily concerned with retail activity in the harbour. However, where the dock has a high public profile, a credibility issue arises since the public has certain expectations of a government facility. Fisheries and Oceans can regulate the use of these facilities and may be able to impose conditions and restrictions on boats using these facilities to retail fish and fish products to ensure the smooth, orderly management of government facilities.

Although federal fishery officers have *ex officio* status to enforce provincial fisheries legislation, they do not normally enforce regulations pertaining to retail fish transactions. Fishery officers do check from time to time for fish that are being harvested and sold illegally at retail establishments.

3. Summary Comments

The provincial government has clear constitutional jurisdiction over fish buying and vending activities. The authority begins once fish are caught and transported within provincial boundaries, and extends to the handling, transportation, processing, distribution, and sale of fish and fish products within the province.

Provincial regulatory power and control over the buying/processing sector and over fish vending derives primarily from the licensing authority provided in the *Fisheries Act* and regulations.

While the administration of licensing and inspection remains the responsibility of the province, the federal government, with its greater manpower resources, is often relied upon to generate information about license applicants. Provincial spot checks of licensed facilities are conducted, although the frequency of this monitoring activity has diminished in recent years. Some incidental enforcement of provincial licensing requirements is carried out through the efforts of the Department of Fisheries and Oceans to ensure compliance with federal handling, transportation, and processing requirements and to enforce illegal sale of fish prohibitions.

A flow chart indicating inter-linking responsibilities between levels of government and among various agencies has been developed and attached as Appendix A to this report.

CHAPTER 3:

THE ROLE OF BUYERS AND VENDORS IN THE BC FISHING INDUSTRY

Introduction

In this chapter, we describe the role played by fish buyers and vendors in the British Columbia fishing industry. In turn, for the various segments of the fish buying sector and for the fish vending sector, we define and describe the sector, quantify the throughput for which it accounts, analyze its relationship to the processing sector (for fish buyers only), and describe its impact on the fishing industry in British Columbia.

To gather data for these descriptions and analyses, we interviewed licensed buyers and vendors. Fourteen companies operating shore stations and/or barges were interviewed; their operations included 30 fish buying stations of this type. Fourteen truck buyers with a total of 36 trucks in operation as fish buying stations were also interviewed. Ten fishermen vendors were interviewed.

Interviews of buyers and vendors were supplemented with interviews of government and industry officials. Historical perspective on the buying and vending sector was provided by background documents and reports cited in this section and the selected bibliography.

Data on throughput of licensed buyers was derived from the 1987 catch statistics (based on sales slips) of the Department of Fisheries and Oceans. Weight and value of salmon purchases, by species and gear, is presented for shore stations and barges, vessels, and trucks. Weight and value of shellfish purchases is presented for truck buyers. Data on shellfish for other types of buyers and for other species (roe herring, halibut, other finfish, and other fish) are not available due to sales slip coding practices that do not allow these data to be retrieved.

The Buying Sector

In 1908, licensing of fishing packing enterprises was introduced under authority of the *Cannery Revenue Act*. In 1934, fishermen, fish buyers, processors of salmon, canneries, and other fish packing enterprises were brought under licensing requirements. Buyers are currently licensed under the *Fisheries Act* and are subject to the *Fish Inspection Act* and Regulations.

The number of fish buyers in the province, as reflected in the number of buyer licenses issued, increased dramatically in 1978. This increase was primarily due to the influx of the so-called cash buyers during the heyday of the roe herring fishery in the late 1970s. Many of these cash buyers were associated with foreign interests. The mayhem of those years gave rise to a moratorium on the issuance of buyers licenses and led to the publication of a provincial policy on *Commercial Fisheries and Mariculture*.[1] The number of fish buyer licenses has declined since 1983 with current levels about the same as the pre-1978 period.

Fluctuations in the number of salmon and roe herring processors and buyers have been triggered by changing market circumstances. Sales of salmon products on world markets are sensitive to world supplies, exchange rates, and general economic conditions. Products other than salmon have narrow world markets. Herring roe, for example, is sold almost exclusively to Japan, where a volatile market contributed in the past (e.g., 1979) to unstable conditions in the Canadian industry.

The growth and development of the buying sector have equally been influenced by changing circumstances in the management of fish stocks. Most notably, Total Allowable Catches in many fisheries have been reduced in an effort to conserve and rebuild stocks, and fishing seasons for many fleets have been shortened. These changes have increased the cost of down time for fishermen steaming to port, offloading fish, and taking on supplies.

Fish buyers in British Columbia are generally distinguished as shore stations, barges, vessels, and trucks. Shore stations or fish camps are generally situated in relatively remote locations and act as transshipment points; some do minor processing. Fish are generally transported from shore stations to processing plants

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[1] British Columbia (1980).

or distributors by truck. Mobile barges are less used recently; barges are mostly tied up now and for the purposes of this study are combined with shore stations. Vessels are mostly the familiar packing vessels licensed by the federal government with a D license, although other commercially licensed fishing vessels comprise about one-third of the licensed fish buying vessels in the province. Truck buyers are mobile operators who purchase fish directly from fishermen and transport it to market or to a wholesaler (processor, broker, or trading company).

1. Shore Stations and Barges

Definition and Description

There is a concentration of shore stations and barges in Tofino and Ucluelet that deal almost exclusively in salmon. In addition, there are two or three in Port Alberni; six on the west coast of Vancouver Island north of Barkley Sound; eight (plus five barges during the roe herring season) in Johnstone Strait and the Gulf of Georgia, mostly on Vancouver Island; five in the central coast (mostly during the roe herring season); and four or five on the north coast.

Shore stations and barges are heavily used by fishermen. They tend to be used because a shore station or barge combined with a truck[2] is much faster than a packing vessel or direct delivery to a plant by a fisherman. Shore stations often provide fishermen with services such as showers, ice, and recreation rooms. They tend to deal primarily with troll fishermen and serve the fresh/frozen market.

In our interviews of shore stations and barges, the most frequently mentioned reasons why they believe fishermen use shore stations were "permanency" and "services." "Price" was the next most frequently mentioned reason. Other reasons were not frequently mentioned.

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[2] Our interviews revealed a growing trend for shore stations and barges to combine their operations with trucks to transport fish to domestic processors.

Throughput

As shown in Table 1, in 1987 shore stations and barges handled 13.6 million pounds of salmon worth an estimated $32.7 million. These figures represent less than 10% by weight of the total salmon catch in British Columbia that year and 15% by value.

The higher share by value of salmon handled by shore stations and barges reflects the species of preference, and higher value end product markets, of salmon trollers. The overwhelming majority (96%) of salmon handled by shore stations and barges was caught by troll fishermen. The most significant species in terms of value were coho, chinook and, to a lesser extent, sockeye.

Not surprisingly, the impact of shore stations and barges in the net fishery was far less than in the troll fishery. Of the total net catch in 1987, less than 1% was handled by shore stations and barges. In contrast, they handled about one-third (33% by weight and 35% by value) of the total troll catch.

Relationship to Processors

Shore stations are closely related to processors. Over 80% of the ones we interviewed are affiliated with established processors and "affiliation" was the overwhelming first choice among reasons cited why processors use shore stations.

"High quality product", "consistent supply", "employee",[3] and "industry experience"[4] were mentioned as distant second reasons why processors use shore stations; the first two seem to be slightly more important than the latter two. "High quality product" reflects the benefits of careful handling practices and quick delivery to market that are facilitated by shore stations. "Consistent supply" is an aspect of affiliation but also likely reflects processors use of shore stations to develop and maintain ties with fishermen, especially through provision of services.

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[3] Employee means that the shore station is owned by the processor and that the reason the processor uses the shore station is that the shore station is part of the processing company.

[4] Industry experience includes longevity, reputation, knowledge and related factors. It reflects the status of the company or station and associated characteristics such as trustworthiness (through length of operating history) and the benefit of dealing with an established firm.

Table 1

Weight and Value of Salmon Purchased by Licensed Buyers in British Columbia, 1987
As Percentage of Total Weight and Value of Salmon Harvested

	SHORE STATIONS & BARGES		VESSELS		TRUCKS		TOTAL	
	Weight lbs	Value $	Weight lbs	Value $	Weight lbs	Value $	Weight lbs	Value $
Net Caught								
SK	153,410	405,161	14,076,079	35,252,550	19,556	51,456	14,249,045	35,709,167
PK	148,014	63,507	27,333,826	11,262,133	4,439	2,752	27,486,279	11,328,392
CM	349,394	564,794	12,126,843	12,236,569	61,370	83,111	12,537,607	12,884,474
CO	12,044	19,106	1,266,810	1,491,419	3,398	5,839	1,282,252	1,516,364
CN	9,954	18,661	671,609	1,122,856	714	1,601	682,277	1,142,118
Net Sub-Total								
	672,816	1,071,229	55,475,167	61,365,527	89,477	144,759	56,237,460	62,581,515
	0.7%	0.9%	55.4%	50.2%	0.1%	0.1%	56.2%	51.2%
Troll Caught								
SK	1,635,067	6,012,184	288,205	1,101,069	212,451	824,983	2,135,723	7,938,236
PK	2,596,911	2,820,773	1,086,648	1,400,452	791,243	1,136,166	4,474,802	5,357,391
CM	119,554	193,651	61,623	108,853	68,793	127,022	249,970	429,526
CO	4,946,610	11,066,684	671,381	1,620,427	420,622	1,050,338	6,038,613	13,737,449
CN	3,624,033	11,571,652	381,823	1,291,452	251,721	813,400	4,257,577	13,676,504
Troll Sub-Total								
	12,922,175	31,664,944	2,489,680	5,522,253	1,744,830	3,951,909	17,156,685	41,139,106
	32.5%	35.3%	6.3%	6.2%	4.4%	4.4%	43.2%	45.9%
Total Salmon								
	13,594,991	32,736,173	57,964,847	66,887,780	1,834,307	4,096,668	73,394,145	103,720,621
	9.7%	15.4%	41.4%	31.6%	1.3%	1.9%	52.5%	48.9%

"Employee" is simply another form -- the strongest -- of affiliation. "Industry experience" may reflect specifics such as handling practices or general attributes such as reputation.

Impact

Shore station and barge interviewees were about equally divided in thinking that their sector is either not changing in size or is shrinking. For those who felt that the sector is shrinking, reasons cited included: inability to compete with trucks, consolidation of buying activities, a more mobile fishing fleet, and more mobile buying units in the form of barges. No single factor stood out as the predominant reason for the declining importance of shore stations and barges. The majority of truck interviewees felt there was no change in other buying sectors including shore stations and barges. A small number felt there was some growth in other sectors but that it was not very significant.

2. Vessels

Definition and Description

There are approximately 300 vessels operating in the British Columbia fishing industry that are licensed to buy fish. Two-thirds are D licensed packing vessels and the remainder are licensed for commercial fisheries by the Department of Fisheries and Oceans. The total number has fluctuated somewhat over the years, mostly in response to the size of the catch.

Throughput

Table 1 indicates that, as licensed buyers, vessels accounted for 55.5 million pounds of net caught salmon and 2.5 million pounds of troll caught salmon in 1987, worth $61.4 million and $5.5 million respectively. Overall, vessels accounted for almost 58 million pounds of salmon with an estimated landed value of $66.9 million. They concentrate on transshipments of sockeye, pink, and chum salmon. These species account for 95% of their throughput.

The relative share of licensed fish buying vessels, as a percentage of the total catch of salmon in British Columbia, amounted to 41% by weight and 32% by value. No comparable figures exist for previous years.

Relationship to Processors

Licensed fish buying vessels are predominantly affiliated with established processing companies. In addition to the affiliated vessels, however, there are the so-called "cash buyers". These vessels either sell fish directly to domestic processors or export it directly to US processors.[5] Those who export focus predominantly on groundfish and late run chum salmon.

Impact

There was a slight feeling among interviewees that the vessel sector is growing marginally. The reason cited for this growth is their ability to travel around with the fishing fleet.

3. Trucks

Definition and Description

There are about 100 trucks currently operating in the province divided between independent and affiliated operators. This sector is growing in importance as trolling seasons get shorter (hence a need for fishermen to spend less time steaming to port and off-loading fish). The mobility of truck buyers is an important asset in this regard.

Truck buyers tend to operate on Small Craft Harbours and Transport Canada docks. This has caused concerns about congestion on the docks, truck buyers making a mess, and unsanitary conditions (only 60% of Small Craft Harbours docks have a fresh water supply). Charges of unfair monopolization of facilities and restricting access have also been levied.

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[5] It should be noted that direct delivery to the US of fish caught in British Columbia is contrary to provincial policy.

Trucks can work in remote locations, but many compete directly with shore stations and barges. Many deal in species such as rock fish, geoducks, and urchin, delivering to facilities throughout the lower mainland. According to our interviews, the fish buying business of trucks is roughly equally divided among salmon, invertebrates, and other finfish. Individually, there are examples of specialists in each category, and all companies seem to do the majority of their business in one category (i.e., they all specialize to a certain extent; there are no true generalists).

The most commonly mentioned factors for why fishermen use truck buyers are "mobility" and "price". In the next echelon of reasons were "reputation", "services", and "efficiency" although "services" did not score higher than third place for any interviewee.

Throughput

Truck buyers handled 1.8 million pounds of salmon in 1987 worth approximately $4.1 million. These figures represent 1.3% of the total British Columbia salmon catch by weight and 1.9% by value.

Truck buyers purchased 95% of their salmon from commercial trollers and concentrated primarily on pink and coho with significant volumes of chinook and sockeye. Overall, they accounted for less than one-tenth of one percent of net caught salmon in the province and less than 5% of troll caught salmon.

Data from the Department of Fisheries and Oceans sales slip database indicate that truck buyers handled just over 9 million pounds of shellfish worth $7.7 million. These figures represent 21% by weight and 23% by value of the total shellfish harvest in British Columbia in 1987.[6]

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[6] These figures are adjusted from the 1987 Department of Fisheries and Oceans database. The original database figures include direct purchases at the plant by companies with plant(s) and vehicle(s) and, therefore, overestimate the true volume of truck purchases. A telephone survey of 7 shellfish companies with trucks, representing 65% of the original volume, was conducted to determine the division of their purchases between trucks and direct plant deliveries. Their total purchases in 1987 were then adjusted to exclude direct plant deliveries and summed to estimate truck purchases for these 7 companies. The ratio of truck to total purchases for these companies was then used to allocate shellfish purchased for the remaining 35% of the original volume.

Relationship to Processors

According to our interviews, over 60% of truck buyers are affiliated with processing companies. About 55% cash fish while 45% book fish although there is little correlation between affiliation and method of payment. Affiliated truck buyers practice both methods of paying for fish. Independents usually pay cash, although some shellfish buyers withhold payment for a shipment until it has passed federal inspection.

Processors use truck buyers for reasons of "consistent supply", "affiliation", "speedy delivery", and "high quality product". For affiliated truck buyers, "affiliation" was the first choice unanimously. For unaffiliated truck buyers, the other three reasons were equally popular. "Reputation" was also mentioned by several interviewees.

Only one of 14 truck buying companies interviewed, representing 4 of 36 trucks accounted for in the survey, makes deliveries to the United States.

Impact

The vast majority of truck buyers believe their sector is growing. Reasons cited for this growth include: the need to accommodate shorter seasons for fishermen; greater efficiency, and therefore lower cost, of trucking compared to shore stations and vessels; growing markets and ability to pay higher prices to fishermen; profits to be made in trucking; and growing use of trucks by established companies forming affiliations.

This view of the truck buying sector was shared by the shore station and barge operators we interviewed; they felt almost unanimously that the truck buying sector is growing. The most commonly cited reason for this growth is the lower cost of entering the buying industry for truckers compared to shore stations. Other reasons -- less stringent operating and construction standards, mobility (meaning less down time for fishermen faced with shorter seasons and smaller quotas), and better final product because of more speedy delivery -- were cited once each.

The 1983 survey of truck buyers[7] indicated that the majority of salmon truck buyers purchased all species of salmon but concentrated on troll-caught salmon. More than three-quarters purchased less than 100,000 pounds during the year. Payments were generally made in cash. The majority paid higher prices than their competitors but one-half indicated their competitors matched their prices. Nearly three-quarters marketed the fish themselves; the remainder through a processing company, broker, or trading company. The majority sold their salmon only in BC. Due to their small volume (2-3% of the salmon catch), they were judged not to have a significant impact on established companies. In many instances, they sold their product in different markets from the established processors.

Based on data on salmon purchases by truck buyers in 1985, the truck buying sector has grown only slightly and does not account for a significant volume of the total salmon catch in British Columbia. The share of total catch handled by truck buyers in 1985 (by weight) was 1%;[8] their share in 1987 was 1.3%. The practice of booking fish seems to be on the rise which likely reflects the increasing number of affiliations between truck buyers and processors and the growing use of trucks by established processors. There appears to be no change in the share of trucked fish that is sold in the United States.

The Vending Sector

Vendors are commercial fishermen who sell their own catch to the general public for personal consumption. Although this practice has a long history in the BC fishing industry, vendors have only been licensed since 1982. The value of "over-the-side" sales quadrupled in that year (compared to 1981) and vendor licensing was introduced with the objective of improving estimates of over-the-side sales through conditions on vendors licenses. Sales records are kept on federal government sales slips but the requirement to complete these sales slips is under provincial legislation and regulations. The licensing of vendors was also used as a tool for enforcing public health regulations.

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[7] Proverbs, T. B. (1983).

[8] Proverbs, 1985.

Definition and Description

According to provincial statistics, the number of fishermen vending licenses issued has been dropping steadily since they were first introduced. Less than 200 licenses were issued in 1987/88.

Of the vendors interviewed for this study, one-third are vending without a license, one-third have been vending for a long time but have only recently acquired a license, and one-third are recent entrants who have had a license since they began vending. Vendors interviewed sell anywhere from 1% to 100% of their catch.

Relationship to the Public

According to the interviewees, the overwhelming reason why fishermen vend their own fish is "better price". The second most popular reason is that they "sell to friends and relatives".

Fishermen believe that the primary reason the public buys fish from them is "freshness". "Price" was the next most popular reason. A distant third reason was "reputation".

Throughput

The amount of fish sold directly to the public by fishermen vendors is only a very small fraction of the total harvest in British Columbia.

Impact

The impact of fishermen vendors on the British Columbia fishing industry is insignificant.

CHAPTER 4:

PRIMARY PURPOSE OF THE LICENSING SYSTEM

Introduction

A number of purposes may be served by the current buyer and vendor licensing systems. In referring to "licensing systems" we mean the licensing requirements found in the *Fisheries Act*, together with the structural and operational standards found in the *Fish Inspection Act*. It is important to keep this distinction between licenses and regulations in mind, since it is possible that there are important reasons for regulating the buyer and vendor sectors quite apart from the rationale for licensing them. This chapter looks at the regulatory framework affecting buyers and vendors with a view to estabishing the primary purpose of government intervention in these areas.

Identifying the primary purpose of the buyer and vendor licensing systems involves considering four possible candidates: (1) public health and safety, (2) administration of commerce, (3) fisheries management, and (4) revenue generation.

In defining these candidate purposes we found that there was more than one aspect to each and that some aspects are included in more than one purpose. In all, seven aspects were identified: (1) public health risks, (2) product quality , (3) competition and efficiency, (4) economic fraud, (5) data collection, (6) illegal sales, and (7) public revenues. The *administration of commerce* purpose, for example, includes the competition and efficiency aspect and the economic fraud aspect, as well as the public health risks, product quality, data collection, and illegal sales aspects. Public health risks, on the other hand, are an aspect of the *public health and safety* purpose and the *administration of commerce* purpose. Similarly, data collection and illegal sales are aspects of both the *administration of commerce* and the *fisheries management* purposes.

A full review of each category requires an examination of various aspects of the licenses themselves as well as the regulations that affect the sector. For instance,

considering the *public health and safety* purpose involves looking at the structural and operational requirements imposed on fish buyers and fishermen vendors. Equally important may be the role of buyer and vendor licenses in the control of illegal sales of unwholesome fish. Of particular interest in this regard is the role of these licenses in the control of sales of bi-valve molluscs that have not been inspected at a federally registered plant.

The *administration of commerce* purpose involves looking at the data collection features of the licensing system, as well as the competition and efficiency aspects of the licenses and regulations. Consumer fraud is another relevant feature of the vendor licensing system. Product quality aspects of the licensing schemes are also considered, since there is a clear link between product quality concerns and the long term viability of the fishing industry. To the extent that certain types of illegal sales of fish may give rise to claims of unfair competition, this aspect of the licensing scheme is also important in evaluating primary purpose.

The *fisheries management* purpose of the regulatory scheme can be detected in its data collection aspects and in the controls placed on illegal sales that relate in a general way to the overall conservation of the resource.

In contrast, *revenue generation* as a primary purpose is relatively straightforward. A quick review of the fees generated by the scheme is usually sufficient to reach conclusions in this area.

We discuss the primary purpose of the fish buyer licensing system and the fishermen vendor licensing system separately after a brief review of current provincial policy respecting these licensing systems.

Current Provincial Policy Respecting Buyer and Vendor Licenses

The issue of primary purpose of buyer and vendors licenses has been addressed in previous studies commissioned by the province.

> *In the past, provincial policy with respect to licensing has essentially been laissez-faire. Virtually all applicants have been granted licenses and the fees and conditions for the licenses have been minor. Licensing has been used as an administrative control on handling and processing*

standards; as an information base for purposes of monitoring the type and location of fish buying and processing; and as a small source of revenues to offset some of the administrative costs of the Marine Resources Branch. But licensing has not been used to control entry and investment or other industry behaviour.

The laisse-faire policy would appear to have changed recently. The Marine Resources Branch...has been recommending against foreign takeover applications because of the applicants' intention to increase processing capacity...and also because the foreign ownership is not seen to be compatible with the Branch's general policy of "best use of the resource for maximum economic and social benefits to Canadians."[1]

New policies, approved by the provincial Cabinet in March 1980, were broadly designed to promote careful management and effective use of the province's marine resources to ensure continued benefits to the people of British Columbia.

The spirit and intent of new policy directing the issuance of processing plant and fish buyers licenses is to promote competition and economic efficiency.... In the interest of providing for social stability, off-shore processing will be limited to fishermen who process their own catches only.... (T)o ensure that maximum economic and social benefits of the resource are derived by British Columbians, fish buyers licenses will be restricted to Canadian citizens or landed immigrants. Processing plant licenses will be withheld from companies under review by the Foreign Investment Review Agency until the Agency has given its approval. Further, buyers licenses will be issued on the condition that purchased raw product is sold only to licensed processors or consumers within British Columbia.... (L)icensed buyers will be required to meet labour immigration regulations.... (F)ishermen who sell directly to the consumer will be required to have vendor licenses and to accurately record and report all sales.... (C)urrent policies, as in the past, will continue to require that processing and buying facilities meet product quality, health, and safety standards. [2]

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[1] Shaffer, 1979.

[2] British Columbia, 1980.

Fish Buyer Licenses

1. Public Health and Safety

Regulation of Public Health Risks

The *Fish Inspection Act* defines *"unwholesome"* as *"fish that has in or upon it bacteria of public health significance or substances toxic or aesthetically offensive to man."* Regulations under the Act are designed to promote wholesomeness of fish through proper infrastructure, appropriate handling procedures, and restrictions on the processing and sale of unwholesome fish.

A great deal of confusion arises out of the failure of provincial fisheries legislation to clearly distinguish between those provisions dealing with public health risks and those dealing with product quality concerns. In discussing the issue of wholesomeness during the course of this study, it became apparent that the term is used in both contexts. However, discussions about situations of *"public health significance"*, defined as situations leading to sickness or death, seemed to centre on specific fisheries and processed fish products. Shellfish, particularly bi-valve molluscs, seem to give rise to the greatest concerns, reinforced by widely publicized incidents involving tainted mussels. The vacuum packing and canning processes also give rise to potential health hazards.

This focus on certain species in the context of related public health hazards is reflected to a certain extent in the law -- provincial legislation does impose special inspection requirements on bi-valve molluscs. Although fish buyers are not subject to any special requirements respecting the handling and transportation of shellfish, the general restrictions placed on the sale of unprocessed bi-valve molluscs apply to this sector.

The extent to which unprocessed finfish give rise to public health hazards is unclear. There appears to be growing concern about possible health threats imposed by the accumulation of toxins in some species of finfish and in the levels of antibiotics and other drugs and chemicals in farmed salmon.

Licensing fish buyers identifies all persons who handle fish, including shellfish, between harvesting and processing. Where tainted bi-valve molluscs are discovered

during processing at a federal facility, buyers licenses may assist in tracking the shipment through the distribution network back to its origin, since sales slip information submitted by licensed buyers includes information that would be useful in this regard.

In light of the considerable health risks imposed by tainted bi-valve molluscs, regulation of the public health and safety aspects of the fish buying sector assumes a strong position in discussions respecting the rationale for regulating this sector. Recent experience has shown the potential magnitude of the impact of tainted mussels on the processing sector and how it spills over to affect the entire industry, including harvesters and finfish processors.[3]

Regulation of Product Quality

The legislative definition of unwholesome embraces the aesthetic or product quality aspects of fish and fish products offered for sale to the public. Standards for handling, transporting, and processing fish are designed to ensure that the product meets generally accepted notions of the aesthetic aspects of wholesomeness: the fish should have an acceptable appearance and odour. Licenses have been used as an administrative control on handling and processing standards. Given the dual purpose definition of wholesomeness in the legislation, product quality seems to be an important aspect of the regulatory scheme.

Product quality, while arguably a feature of the regulatory scheme respecting fish buyers, relates as much to the question of administration of commerce as it does to public health and safety concerns affecting the buying/processing sector. Again, the distinction between finfish and shellfish is important, since product quality concerns with shellfish may pose a threat to public health because of unsanitary infrastructure or poor handling practices. In contrast, structural and operational deficiencies in the handling and processing of finfish do not, for the most part, create comparable public health risks, unless the fish is canned or vacuum-packed. Moreover, consumers can normally detect product quality deficiencies in fresh finfish with their eyes and noses. Detection of problems in shellfish is virtually

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[3] In 1987, tainted mussels from PEI caused illness and death in at least one person after being consumed in Quebec and Ontario. All fish sales across Canada were reportedly affected by the incident.

impossible for the average consumer.

These regulations would seem to derive as much from the province's mandate to promote the economic growth and development of the industry as its mandate to provide public health and safety. Poor aesthetics can have a deleterious affect on the fishing industry if unpleasant or unacceptable products end up in the hands of consumers and create a negative reaction or attitude toward the industry in general. The problem is that the actions of one individual or company can have adverse effects on others –there is a spillover of the impacts onto "innocent bystanders."

2. Administration of Commerce

Regulation of Competition and Efficiency

Provincial legislation and regulations make no mention of competition and efficiency as a purpose of licensing and regulating fish buyers. The 1980 commercial fisheries and mariculture policy states, however, that *"the spirit and intent of new policy directing the issuance of...buyers licenses is to promote competition and economic efficiency within the buying-processing sector...."* Restrictions placed on the issuance of buyers licenses –that they will be restricted to Canadian citizens and landed immigrants and issued on condition that purchased raw product is sold only to licensed processors or consumers within British Columbia –are a matter of departmental policy rather than legislative restriction.

The policy both promotes and restricts competition in the fish buying and processing sectors. Restrictions on off-shore processing and who buyers may sell to restrict competition and efficiency, for example, although it may be argued that these restrictions were put in place to promote the achievement of other provincial government objectives, such as employment and economic viability of the processing sector. Licensing buyers and requiring buying facilities to meet product quality, health, and safety standards prohibit unfair competition by ensuring that everyone plays by the same rules. It should also be noted that the explicit objective in the 1980 policy of promoting competition and efficiency led to the conclusion that the moratorium then in place on the issuance of new licenses would be lifted and not restricted on the basis of source or type of capital.

An "open" licensing system will provide for a climate in which competition for raw product can flourish, in which new entrants to the industry can reduce corporate concentration and generally provide for economic efficiencies which will allow the industry to respond to changing market demands.

With regard to truck buyers, the current concern is that they are *"now setting up open air processing operations and thereby avoiding compliance with the rigid quality control standards of the federal and provincial fish inspection regulations to which fixed asset owners must adhere."* The current definition of fish buying includes eviscerating which clouds the distinction between buying and processing. If processors are regulated to ensure the wholesomeness of fish and fish products, then buyers should be similarly regulated if they are undertaking activities such as eviscerating that could affect wholesomeness. Thus, the provincial government has been called upon to apply the same standards to buyers undertaking "processing" activities as those applied to processors. On these grounds, competition and efficiency emerge as an important reason to regulate buyers. If buyers were not regulated, they would become an uncontrolled segment of the processing sector.

An alternative to regulating fish buyers would be to define buying as excluding all processing activities and enforce it strictly. This would not remove the need to regulate buyers (strictly defined), but would reduce the infrastructure and handling conditions that they would be required to meet. In either case –whether buyers as currently defined are subject to the same regulations as processors, or new regulations are developed and applied to buyers prohibited from engaging in processing activities –the objective is the same: to make the regulation of the sector consistent with its activities, thereby promoting competition and efficiency.

Despite explicit statements in the 1980 policy, competition and efficiency cannot be said to be a primary purpose of *licensing* fish buyers. While it is important that fish buyers be fairly regulated for reasons of competition and efficiency, and arguable that this is a purpose of regulating them in the first place, competition and efficiency do not appear to be as important in this regard as, say, public health and safety. Given that they are regulated, the government should strive to ensure that the regulations do not create a situation of unfair competition as would be the case if those engaging in similar activities were not subject to similar regulations. Both the regulations and their enforcement should strive to achieve this objective, but it must be seen as secondary to product quality and public health and safety.

Regulation of Product Quality

Regulations designed to ensure product quality derive in part from the province's mandate to promote economic growth and development of the industry. Poor aesthetics have spillover effects on the entire fishing industry. Further, so long as the *Fisheries Act* defines "*unwholesome*" to include product quality as well as public health and safety, there is a legislative basis for government involvement in this area.

Product quality relates to two areas: product differentiation and product deterioration. Product differentiation refers to grading products by colour, appearance, and size, and creating specific market niches for graded or branded products. World market trends suggest that product differentiation is growing in importance rapidly. Product deterioration concerns the impact of handling, transportation, and storage on the shelf life of products.

The provincial regulatory philosophy regarding the use of government standards to deal with product quality is not entirely consistent between industry sectors. Provincial grading standards exist for the poultry industry and for the fruit and vegetable industry, mirroring federal export standards in these areas. However, no provincial grading system exists for the meat industry despite the existence of federal export standards. Where government grading standards do exist, they are viewed as minimum standards. In many cases, such as with the fruit and vegetable industry, industry standards are more stringent to respond to market demands.

In the fishing industry, provincial regulations impose standards designed to prevent product deterioration, but do not impose government grading standards.

Federal export standards for fish respecting product grading and deterioration would seem to be entirely consistent with the approach taken by the federal government in other food product industries.[4] However, the role of the province in this area is not as clear. While the provincial fisheries legislation clearly establishes a role for the province in matters relating to product deterioration, the extent of provincial involvement in product grading is largely a matter of regulatory philosophy and available resources.

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[4] A federal grading system is in place for frozen exported salmon.

A number of recent events support continuing government involvement in certain aspects of product quality, and hint at a possibly expanded role for government in this regard. At meetings following the First Ministers' Conference in November, 1985, Canadian Fisheries Ministers reached a number of decisions regarding product quality, quality improvement, and value added in the fishing industry. These decisions were endorsed at the Annual Conference of First Ministers at Vancouver in November, 1986.[5] These issues are of significance in their intrinsic importance to the current health and future development of the industry. The decisions clearly define a role for government in promoting and achieving these objectives. Participants in the British Columbia fishing industry support greater corporate involvement in enforcing product quality standards within the industry. Further, they clearly see product quality and the closely related issues of quality enhancement, value-added development, and development of new food products as a key to the future health and development of the industry.

This interest in product quality can also be seen in other countries, such as the USA, where fisheries agencies, together with industry, are developing a model seafood surveillance program which includes controls on product quality, referred to as "plant/food hygiene."[6]

However, maintenance of a provincial grading system is expensive and there is no clear indication of industry support for this idea. In most cases where a provincially imposed grading system does exist, the province relies extensively on federal inspectors to ensure both federal and provincial standards are met; provincial standards often mirror federal grading standards to avoid duplication and confusion. In light of current provincial resource constraints, any change in this arrangement might result in the removal of existing provincial grading standards, or an attempt to recover the costs of administering the system from industry.

Government intervention is not the only means of promoting product quality. In some food product industries, the public response to product quality puts pressure on the industry to respond with industry-designed grading standards and self-

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[5] Canada (1986).

[6] *Model Seafood Surveillance Program: MAFAC Update Report*, a presentation by S. Garrett of the National Marine Fisheries Service at the 43rd Annual Convention of the Fisheries Council of Canada, Quebec City, October 6, 1988.

monitoring of the standards. The government may assist by providing services to the industry. Commodity-type promotions, including advertising, have been used by government in the past to promote industries. Given current provincial resource constraints, this approach may not receive much support. The government can also play an advisory role, providing marketing advice and assistance to industry, or a coordinating role helping to organize industry participation at trade shows, printing sources books, and so forth.

Product quality seems to be an important aspect of the current legislative scheme. Both the extent and nature of government intervention in this area are uncertain, being a matter primarily of regulatory philosophy and government resources. However, there are compelling reasons for an ongoing and possibly expanded role for the provincial government in the area of regulatory control and marketing assistance to the industry. It is beyond the scope of this report to outline the appropriate future role of the provincial government in this regard; these issues have been identified for further study by the Ministry of Agriculture and Fisheries.

Collection of Data

Data collection is an important aspect of the fish buyers licensing system. The *Fisheries Act* requires two types of records be kept: (1) an annual report detailing production (currently required only of processors) and (2) the regular submission of fish slips. Fish slips ensure sales reporting and generate data on the circumstances of harvesting and the number, weight, and value of the fish caught. These reporting requirements are a condition of the license, thus ensuring not only identification of participants in the sector, but also economic data on sector activities.

The federal government relies extensively on sales slips to provide catch reporting in the salmon fishery. The ability of the federal government to develop a mandatory catch reporting system is constrained by the wording of section 48 of the federal *Fisheries Act*. The Act provides for the furnishing of a true return, but only at the request of the Minister or a fishery officer. While such a request is made on the face of each commercial fishing license issued by the federal government, it is not clear whether the courts would regard this approach as an appropriate exercise of discretionary authority as outlined in section 48. For this reason, continued

federal reliance for catch statistics on sales reporting authorized under provincial legislation may be unavoidable.

While the fish slips do generate biological data relied on by the federal government to manage the fisheries resource, the system also generates data on sector participants and economic values that are of strong interest to the province. The province has general responsibility for the growth and development of the fishing industry which requires data on the health and viability of the industry. Sector data also alert regulatory authorities to changing dynamics within an industry, highlighting new areas of regulatory concern. Biological data are of interest to the province because they generate information on the fisheries resource which, in turn, has implications for industry viability, and because they may assist the government in reaching decisions in other resource sectors that have an effect on fisheries.

The provincial legislation establishes mandatory reporting requirements on fish buyers, processors, and vendors. While the provincial reporting system clearly serves the needs of both federal and provincial fisheries agencies, it is not clear what practical alternatives to this system are available. By agreement, the federal government collects fish slips and tabulates landing/harvest data while the province collects processing/economic data through annual production reports.[7] Both federal and provincial information needs appear to be served by the current provincial reporting system with a minimum of duplication between the two levels of government.

While the introduction of a federal catch reporting system for the salmon fishery might change our analysis in this area, it is unclear whether such a system would generate the data required by the province or whether the province would have timely and easy access to the information in such a system. The generation of appropriate information is necessary to support the achievement of the provincial mandate and its interests. While the data could be generated in different ways, requiring licensing of buyers and processors and data reporting by first recipients of fish from fishermen is a reasonable way to proceed. Data collection would seem, therefore, to be an important aspect of licensing buyers and a candidate for primary purpose as it related to the administration of commerce.

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[7] A *Federal-Provincial Statistics Agreement* regarding this situation was established in 1981.

Regulating the Illegal Sale of Fish

Buyers licenses are issued to individuals wishing to purchase fish *direct from licensed commercial fishermen* for purposes other than personal consumption or resale to others for their personal consumption. Sections 27(4) and (5) of the federal *BC Fishery (General) Regulations* prohibit the possession of Indian food fish by a person other than an Indian, and prohibit the sale of Indian food fish. Similar restrictions are placed on the sale of sport caught fish.

The reporting requirements placed on fish buyers ensure that the origin of fish handled by the buyer can be traced. This would assist where fish handled are discovered to originate from closed harvesting areas. Beyond this, there is little to be said for buyers licenses being generally helpful in controlling illegal sales. There may be some benefit from licensing buyers in this respect, but it seems unlikely that this is the primary purpose of licensing them.

3. Fisheries Management

The strongest indication that fish buyers licenses are in some way linked to fisheries management lies in the data collection aspects of the licensing scheme and in the incidental effect these licenses may have on the control of illegal sales of fish that threaten resource conservation goals.

Data Collection

The generation of biological data is clearly one important aspect of the mandatory provincial reporting scheme. In addition to biological data, however, the licensing scheme generates information on who is participating in the buying/processing sector and other economic data of importance to the province in regulating this area of commercial activity. For this reason, although the data collection features of the licensing scheme suggest that fisheries management is one purpose served by the scheme, these same features serve equally important administration of commerce purposes.

A mandatory landing requirement is one of the options being considered once restrictions on exports of unprocessed fish are eliminated (as a result of the recent

GATT decision). Whether this option is adopted bears on the relative merits of federal catch reporting versus provincial sales reporting. Sales reporting becomes less effective if export restrictions are lifted because they cannot be enforced on deliveries outside the country. The case for federally authorized mandatory catch reporting becomes even stronger if a mandatory landing requirement is not implemented.[8]

Illegal Sales

While the control of illegal sales generally relates to conservation concerns, as discussed above the role of buyers licenses in this regard is incidental at best.

4. Revenue Generation

Section 13(2) of the *Fisheries Act* stipulates that *"no person shall operate a fish buying station unless he is the holder of a license issued for that purpose and has paid the fee prescribed..."* Fees are outlined in Schedule 4 of the regulations. Fees for licenses to buy salmon and roe herring are $115 each; for other finfish and invertebrates license fees are $75 each. Revenue from buyers license fees in 1987 amounted to just over $70,000, not a significant amount of money compared to the cost of the program, especially if it were staffed at a level that would allow for meaningful enforcement of regulations.

There are no explicit statements in the *Fisheries Act* or regulations that revenue generation is a purpose of the licensing program or that fees will or should reflect the value of the species to be purchased. In 1980, however, the provincial government decided *"it will be the policy to set license fees such that total revenues collected recover the major costs of government services to the fisheries sector. License fees will reflect the relative value and volume of product handled."* Buyers license fees were subsequently amended in the regulations, and are now differentiated by species in a way that could be interpreted as reflecting their relative value. There is no differentiation by volume of product handled.

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[8] The role of the provincial government with respect to regulating and enforcing new measures that could be introduced in response to the recent GATT panel findings concerning federal export restrictions on sockeye and pink salmon and roe herring has been identified by the Ministry of Agriculture and Fisheries as an issue for further study.

In the past, agreement with industry to increase license fees has been secured on condition that the inspection function be appropriately enhanced. Fees were subsequently doubled, but no improvements were made in the delivery of the program. More recently, program responsibilities and resources were transferred to the Ministry of Health, but there has not been (nor is there planned) any change in the license fee schedule. Since revenues generated from license fees are not tied to program delivery, it does not seem that license fees are intended to generate revenues to recover program costs.

In addition to setting out the requirement to obtain a license, the only other conditions attached to a buyers license in the *Fisheries Act* are the requirements to pay prescribed fees and report prescribed information. From this it would seem that the (unstated) purposes of licensing are revenue generation and data collection. The 1980 policy statement notwithstanding, the sale of buyers licenses does not generate sufficient revenues to justify a conclusion of primary purpose.

Conclusions Respecting Primary Purpose of Fish Buyer Licenses

Licensing and regulating fish buyers has been used to: control threats to public health and safety; promote product quality; generate data on who is participating in the buying/processing sector and on the general economic significance of the industry; generate biological data; affect the competitiveness and efficiency of the sector; and generate revenue. As well, some incidental uses have been made of these licenses in monitoring and controlling illegal sales of fish.

Our review of the fish buyer license system suggests that the most important reason for *licensing* fish buyers relates to the data collection features of the scheme. This, in turn, leads us to conclude that the primary purpose of the fish buyers *license* relates to the administration of commerce, with incidental but important benefits for fisheries management.

The primary purpose of *regulating* buyers differs for finfish and shellfish. Because of the considerable health risks of contaminated shellfish, particularly bi-valve molluscs, the primary purpose of *regulating* buyers of shellfish is the protection of public health and safety. For finfish, there is less concern for public health and safety. Standards imposed on buyers relate more to product quality concerns, and

reflect the dual purpose definition of "unwholesome" in provincial fisheries legislation.

Thus, the purpose of regulating fish buyers differs from the purpose of licensing them. Regulation of buyers relates to the protection of public health and safety and the administration of commerce. Of course, the need to regulate in this area may also justify the issuance of licenses, since the licenses identify participants in the sector making it easier to trace the origin and handling of fish when problems are detected.

We conclude that the primary purpose of licensing and regulating finfish buyers is the administration of commerce. In this sense, the provincial scheme generates data and ensures product quality concerns are met. On the other hand, the primary purpose of licensing and regulating shellfish buyers is protection of public health and safety.

In practical terms, the distinction between public health risks and product quality concerns may cause more confusion than it resolves in deciding if there is a legitimate role for the government to play in licensing and regulating fish buyers and assigning roles to provincial Ministries. Public health and safety is the prerogative of the Ministry of Health, whereas product quality is of interest to the Ministry of Agriculture and Fisheries. Further, although we have distinguished between the primary purposes of the licensing systems for finfish and shellfish, product quality is not unimportant in the shellfish industry and there are public health risks in finfish. Given that many buyers are licensed to handle both finfish and shellfish, it seems impractical to distinguish so definitively between the two groups. Having established a legitimate role for government in these sectors, rational and efficient use of public sector resources demands that the two Ministries coordinate their activities to achieve all government objectives while avoiding duplication of effort.

The province has a legitimate role and a strong interest in licensing and regulating fish buyers. This extends to both shellfish and finfish, although the rationale for regulating fish buying activities in each area may differ. The province has jurisdiction to regulate public health and safety and to regulate the administration of commerce within the province, thereby justifying regulatory intervention in the buying/processing sector.

Fishermen Vendor Licenses

1. Public Health and Safety

Regulation of Public Health Risks

Commercial fishermen selling their own catch are subject to the same regulatory requirements respecting the sale of fish and fish products as non-fishermen vending fish. Restrictions on the sale of unwholesome fish and the sale of unprocessed bi-valve molluscs apply uniformly to all persons selling fish to the public. Infrastructure and handling prescriptions in the *Fish Inspection Act* are designed to ensure the wholesomeness of fish sold to the public.

Licensing fishermen vendors may provide incidental, but important, support in dealing with illegal sales of unprocessed bi-valve molluscs. Everyone selling shellfish as defined in the *Fisheries Act* regulations is required to be licensed either as a processor or buyer. These licensing requirements assist enforcement officers in tracking product as it moves from the harvester to the consumer. This is not reason enough to justify a conclusion of primary purpose; it is rather a benefit of licensing vendors.

Nevertheless, *regulation* of all retail fish sales is an important area of provincial concern, given the considerable health hazards that can arise in connection with the consumption of bi-valve molluscs. While licensing may not be of primary importance in this area, enforcement of statutory restrictions on retail sales is essential.

Regulation of Product Quality

The *Fish Inspection Act* prohibits, in section 24(1), the sale of fish or fish products to the consumer unless the premises meet the requirements of Schedule F. Section 24(2) goes on to provide that fishermen who sell their catch to the public may be exempted by the Minister from these requirements.

Schedule F outlines, among other things, structural and operational standards for retail fish outlets. One of the objectives of these regulations is to ensure a high standard of product quality. No logical distinction exists between fishermen

vending to the public and non-fishermen who also engage in dockside sales. Schedule F provisions apply theoretically to all persons selling fish and fish products to the public.

While these standards are currently one feature of the regulatory scheme governing everyone whoe sells fish to the public, it is not clear that any special conditions exist that make it necessary to license fishermen vendors. This impression is reinforced by statutory provisions which permit possible exclusion of fishermen vendors from Schedule F requirements.

2. Administration of Commerce

Collection of Data

Over-the-side sales of fish by commercial fishermen to the public quadrupled from 1981 to 1982. The original purpose of licensing vendors was to improve the quality of data on over-the-side sales by introducing mandatory sales reporting. Licensing vendors for this purpose is necessary because the principle of having the first recipient of fish from commercial fishermen complete and submit a sales slip would, in this case, require this activity to be undertaken by members of the general public. This is unreasonable and unworkable, so the onus falls on the vendor.

Data on over-the-side sales are necessary to ensure that complete information is collected on the biological status of the resource and the economic health of the industry.

Protection Against Consumer Fraud

Schedule F of the *Fish Inspection Act* regulations details requirements for retail fish outlets; included are standards respecting packaging and labelling fish and fish products. One of the objectives of the Schedule F regulations is to protect consumers from fraud. The practice has been to apply the Schedule F standards to retail sales by commercial fishermen. To the extent that these regulations are applied to fishermen vendors, protection against consumer fraud is clearly an important feature of the regulations governing this category of retail fish sale.

Beyond the ability to suspend or revoke a license for a breach of these provisions, vendors licenses are not the key to provincial control in this area. Many individuals and companies who sell fish, to whom Schedule F requirements apply, are not similarly licensed. The key is inspection and enforcement of Schedule F.

Regulation of Competition and Efficiency

The exemption from licensing for those buying fish for their personal use or for resale to others for their personal use makes it clear that vendor licensing was not introduced primarily to achieve the objective of greater and more equitable competition and efficiency. This lack of complete coverage strengthens the case that the primary purpose of licensing vendors is data collection.

3. Fisheries Management

The strongest link between fishermen vending licenses and fisheries management arises out of the role these licenses play in controlling the illegal sale of fish and in completing data on total landings of fish.

Illegal Sales

Vending licenses offer *prime facie* proof of the origin of fish being sold. Vending licenses form part of the paper trail required to identify the original harvester, which is clearly important for violations involving Indian food fish or sport caught fish. This is primarily a benefit to the federal government, which begs the question of whether licensing vendors for this purpose is an appropriate use of scarce provincial resources.

Under the *Fisheries Act*, "*a person buying...fish...direct from a fishermen for that person's personal use or for resale to others for their personal use*" is not required to have a vendors license. If licenses were primarily designed to control illegal sales of fish, this exemption would not exist. Provisions such as this tend to refute any conclusion that fishermen vending licenses are designed to control illegal sales.

Data Collection

As discussed above, an important aspect of vendor licenses is the generation of data on over-the-side sales by commercial fishermen. While these data are clearly designed to complete information received from buyers and processors on commercial landings, other types of data are also generated by provincial sales slips. Nonetheless, biological data used for the purposes of fisheries management are clearly an important aspect of the vendors license scheme. To the extent that such reporting requirements are mandatory under provincial legislation, provincial involvement in licensing for this purpose may be justified in terms of effectiveness. However, there may be better ways to collect these data that would rely less on provincial resources.

4. Revenue Generation

Section 13(4) of the *Fisheries Act* stipulates that, *"no fisherman shall sell or offer to sell fish...unless he has a fisherman's vending license...and has paid the fee prescribed."* Vendors licenses cost $30 as prescribed in Schedule 4 of the regulations. The 181 vendors licenses issued in 1987 generated $5,430 in revenue for the provincial government.

Despite statements to the contrary in the 1980 commercial fisheries and mariculture policy that include revenue generation as a purpose of the licensing system, it cannot be concluded that revenue generation is the primary purpose of licensing fish vendors.

Conclusions Respecting Primary Purpose of Fishermen Vending Licenses

One of the most important aspects of *licensing* fishermen vendors is data collection: the principle of first recipient is not workable when fishermen sell their catch directly to the public and the onus is on the fisherman to complete and submit a sales record. The most important aspect of the information generated by provincial sales slips seems to be biological data, which are used to complete federal records of total landings. In this sense, primary purpose relates to fisheries management.

The province may wish to explore alternative methods of securing this information with the Department of Fisheries and Oceans, methods that would rely less on provincial resources.

However, other concerns will necessitate a continuing *regulatory* role for the province. Public health concerns respecting the sale of unprocessed shellfish, particularly bi-valve molluscs, require the ongoing enforcement of current provincial processing requirements. The regulation of structural and operational standards designed to ensure general product quality may also be justified. While licenses may not be required to enforce these standards, as evidenced by the number of unlicensed fish vendors to whom public health and product quality concerns also apply, inspection and enforcement of standards governing retail sale transactions and restrictions on illegal sales of fish will be required.

CHAPTER 5:

REGULATING ILLEGAL SALES

Introduction

While the province has clear legislative authority over all commercial transactions occurring within the province including sales of fish, in many cases the impact of *illegal* sales of fish is felt by both the federal and provincial governments. Illegal sales of fish may have implications for the administration of commerce, for public health concerns, and for the management of the resource.

The Ministry of Agriculture and Fisheries has identified a number of special areas of concern relating to illegal fish sales. These include:

(1) sale of fish not reported on fish sales slips;
(2) purchase and sale of Indian food fish;
(3) purchase and sale of bi-valve shellfish harvested from a closed area;
(4) sale of bi-valve shellfish that have not been inspected at a federally registered facility;
(5) sale of unwholesome fish products by fish vendors.

Each area seems to pose special enforcement problems for both federal and provincial authorities.

The purpose of this chapter is to review each area of illegal fish sales with a view to determining the role, if any, of the province. Alternative approaches to responding to the problem are also outlined.

Sale of Fish Not Reported on Sales Slips

"Sales slips" refer to the record requirements imposed on processors, fish buyers, and fishermen vendors under provincial legislation. Five sales slips types are

provided for in provincial legislation. Schedule V of the *Fisheries Act* regulations sets out the form to be used by fishermen vendors; Schedule VI, Tables 1 through 4, sets out the forms –four different forms are provided for cash fish, book fish, roe herring, and clams –to be used by the buying/processing sector. In all cases, license holders are required to submit completed records weekly to the Department of Fisheries and Oceans. Under the legislation, failure to submit required records is an offence for which a license holder would face the possibility of license suspension or revocation.

The buyer/processor sales slips provide the following information: name of buyer/processor, name of harvesting vessel, CFV number, vessel owner's name and address, names and Social Insurance Numbers of skipper and crew, date of transaction, gear used, area of catch, days fished, party to whom fish is delivered (plant, packer, collector, other), and number, weight, and value of fish by species. There are minor differences among the four sales slips set out in the regulations for cash fish, book fish, roe herring, and clam purchases.

Vendor sales slips provide information on vessel name, CFV number, vessel owner's name and address, date of transaction, and number, weight, and value of fish by species.

The role of the province in the administration of commerce has been discussed earlier in this report. The importance of data for identifying sector participants and monitoring the growth and significance of the sector has also been discussed. Data on the fish buying sector was felt to be particularly important in this regard. For these purposes, the province requires the following sales slip information: name of buyer, name of harvesting vessel, CFV number, party to whom fish is delivered (plant, packer, collector, or other), and weight and value of fish by species.

The federal government has a mandate to protect and conserve the resource. Information on landings and detail on harvesting activity are important to resource management efforts. The Province, on behalf of the federal government, requires the following information on sales slips: name of buyer, name of harvesting vessel, CFV number, date of transaction, gear used, area of catch, days fished, number of fish caught by species.

Concern over the misreporting of information on sales slips has been expressed by both federal and provincial authorities, although the magnitude of the problem is unclear. Equally unclear is the nature of the information that is being misreported. To the extent that misreporting affects the accuracy of data on the number, weight, and value of fish caught, this violation affects both levels of government.

The current reporting system reflects the traditionally strong ties between commercial fishermen and the processing sector. Relying on the first recipient of fish, as opposed to fishermen, to generate catch data has been extended to both buyers and processors of fish. The exception is where the first recipient of fish is a member of the public, in which case fishermen are required to report. The current sales slips reporting system derives from provincial legislation and regulations, and arises out of provincial jurisdiction over the conditions attaching to retail transactions within the province.

In the salmon fishery, the federal government relies heavily on the sales slip reporting system for its information needs. In other fisheries, the Department of Fisheries and Oceans has devised other means of generating catch information: commercial fishermen are often required to keep and submit log books; hailing systems are also used. While the current ability of the federal government to impose a mandatory reporting system may be limited by the wording of section 48 of the federal *Fisheries Act*, the federal government does have jurisdiction to impose reporting requirements on harvesters since the requirement can be viewed as necessarily incidental to the general scheme to manage the resource.

Investigating the ease of developing and enforcing a mandatory federal catch reporting system requiring commercial fishermen to supply information is beyond the scope of this report. However, it is clear that the information generated by such a reporting system would not likely satisfy provincial information needs. Data on weight and value of fish caught may possibly be collected under a federal catch reporting system, but data on the identity and location of sector participants would probably not be part of federal information needs.

The province, therefore, has an ongoing interest in maintaining a system of sales reporting and in enforcing these requirements, particularly in the buying sector.

With regard to how to effectively regulate the sale of fish not reported on sales slips, we have identified three options:

(1) Increase enforcement resources applied directly to the sales reporting system.

(2) Verify sales reporting information by cross-checking it against data on processing plant output.

(3) Institute a mandatory catch reporting system under federal authority, and use the two reporting systems to cross-check each other.

Increasing enforcement resources is an obvious option, but not one that is necessarily cost-effective or efficient. A related option would be to use additional (or reallocated) resources to cross-check sales slip information against data on processing plant output. Finally, the federal government could institute mandatory catch reporting to complement and verify data collected on sales slips. We hesitate to recommend this option without further study of the benefits and costs of a parallel reporting system. Creation of a federal reporting system would mean at the very least changes to both provincial and federal legislation, regulations, and forms.

Current enforcement responses to misreporting data on sales slips are limited to suspension or cancellation of the license, an option that may not always seem reasonable in the circumstances. Creating a new provincial offence for misreporting data on sales slips might give the province more flexibility in responding to this violation.

Purchase and Sale of Indian Food Fish

Regulations under the federal *Fisheries Act* prohibit the possession, by anyone other than an Indian, of Indian food fish. Sale of Indian food fish to the public is also prohibited. Although provincial legislation does not expressly prohibit the purchase and sale of Indian food fish, fish buying and fishermen vending activities are, by definition, confined to commercially caught fish. However, all purchase and sale transactions are not covered by these license restrictions: the purchase of fish for personal consumption is not licensed, for example, nor is the sale of fish to the public by non-fishermen. Restrictions on the fish that may be handled in these

transactions exist only in federal legislation and regulations.

Provincial interest in the illegal purchase and sale of Indian food fish arises out of the possibility that the illegality creates unfair competition, and may give rise to product quality and public health concerns, defined in provincial legislation as wholesomeness.

Unfair competition exists only if: (1) the illegal sales lead to changes in the Indian food fish allocation, taking fish away from the commercial fishery, or (2) different license fees for Indian food fish and commercial fishing licenses are not justified by differences in rights and privileges being purchased. Although there are concerns that illegal Indian food fish may create an incentive for native fishermen to exceed their catch allocations, it is unlikely that this illegal activity would result in a lower allocation to commercial fishermen. An analysis of the rights and privileges being purchased under a fishing license could, in itself, be the subject of a study, but we see no strong reason to conclude that current license fees justify a judgement of unfair competition.

Public health and product quality concerns are no different for Indian food fish than for commercially caught fish although the illegal purchase and sale of Indian food fish may be accompanied by circumventing or avoiding processing requirements. The provincial interest in this violation seems to be limited to the enforcement of the *Fish Inspection Act* and regulations. It is important to keep in mind that these concerns arise only if existing restrictions on the purchase and sale of Indian food fish are not adequately enforced.

If the federal government were to permit the sale of Indian food fish, the province's interest would be in extending product quality and public health concerns under the *Fish Inspection Act* to these transactions. The province has the jurisdiction to regulate these aspects of the purchase and sale of Indian food fish because of its jurisdiction over all commercial transactions involving fish within the province.

The enforcement of restrictions on the illegal sale of Indian food fish is largely a federal concern, and there seems to be no special reason for the province to intervene in this matter.

Purchase and Sale of Bi-valve Shellfish Harvested From Closed Areas

The federal government has the right to close fishing areas, including shellfish harvesting areas, for reasons relating to conservation as well as concerns over public health and safety. With bi-valve shellfish, contamination and/or toxicity are the most frequent reasons for area closures. The control of illegal shellfish harvesting activities is primarily a federal responsibility, although the province controls harvesting of oysters.

The province has an interest in the issue because, if control over illegal harvesting activities is ineffective, the problem becomes one of public health and safety. The province has jurisdiction to deal with this illegality because of their mandate over all commercial transactions within the province and their mandate over public health and safety in the province.

Although the magnitude of illegality in this area is unclear, in light of the considerable public health risks posed by illegal harvesting activities, provincial responsibilities in this area are unavoidable. A number of options are available to provincial authorities in this regard.

(1) stricter enforcement of sales slip reporting requirements respecting origin of shellfish, particularly bi-valve molluscs;

(2) increased enforcement resources applied directly to policing closed areas in which the province controls harvesting (i.e., oysters);

(3) shifting the onus to harvesters to prove that shellfish have been harvested from an open area. One suggestion is that processors buy on consignment, with payment conditional on the product passing inspection by the Department of Fisheries and Oceans. This would eliminate some of the opportunity for harvesters to benefit from such illegal activity.

Sale of Bi-valve Shellfish that Have Not Been Inspected at a Federally Registered Facility

Provincial regulations prohibit the sale of bi-valve shellfish prior to their being inspected at a federally registered facility. The only exception permitted in law is the sale of bi-valves by a commercial fishermen to a buyer, who in turn will sell or deliver the product to a federally registered facility.

The sale of unprocessed shellfish, particularly bi-valve molluscs, is clearly a concern to the province for reasons related to public health and safety. As well, the consumption of unwholesome shellfish has a potential impact on the growth and development of the entire fishing industry.

Greater enforcement of provincial shellfish regulations through the handling and distribution network is clearly required. A number of options may be available in this regard:

(1) Increase enforcement resources applied to monitoring proof of inspection at wholesale and retail outlets.

(2) Tie licensed buyers of shellfish to processors to ensure that all shellfish handled by buyers goes directly to a federally registered plant.

(3) Do not allow independent buyers to handle bi-valve molluscs.

(4) Introduce a "waybill" system that would trace where shellfish are delivered.

The Ministry of Health and municipal health units play the lead role in the inspection and enforcement of retail fish outlets (restaurants and fish vendors). The Ministry of Agriculture and Fisheries inspects both fish vendors and buyers. There is an obvious need to coordinate the application of provincial and municipal resources to respond to this problem through post-harvest phases.

Sale of Unwholesome Fish Products by Fish Vendors

Provincial regulations prohibit the sale of unwholesome fish products. This prohibition applies not only to licensed fish vendors, but to anyone selling fish. There is no evidence that sales by licensed fishermen vendors raise special concerns in this area, nor is this problem limited to licensed fishermen vendors.

The primary concern regarding the sale of fish products by licensed fishermen vendors has to do with product quality. Public health concerns arising from the sale of shellfish are only a concern where there is insufficient compliance with processing requirements. This problem was discussed earlier in this chapter. Thus, concerns with wholesomeness usually involve product quality aspects of the finfish being offered for sale directly to the public by fishermen. Provincial law permits a fishermen to "*dress, ice, or freeze his own catch*" which means that fishermen can effectively carry out activities usually defined as processing. This introduces the wholesomeness issue and requires the vigorous enforcement of processing regulations about structural and operational standards. Provincial regulations also impose structural and operational standards on all retail fish outlets, including over-the-side sales by both licensed fishermen vendors and non-fishermen vendors. Increased enforcement resources may be required to ensure more vigorous and even application of these requirements.

There have been reported instances of non-fishermen selling fish dockside as freshly caught that have been acquired from a buyer or processor. Unmarked, previously frozen fish products do not appear to give rise to public health or product quality problems; to the extent that restrictions respecting the sale of unprocessed bi-valves and regulations respecting structural and operational standards are complied with, the only special concern that arises over these types of retail transactions has to do with the consumer fraud aspects of the transaction.

Regulating the sale of unwholesome fish products is clearly a matter of provincial responsibility. In dealing with licensed fishermen vendors, a number of options are available:

(1) Increase enforcement resources for monitoring compliance with existing structural and operational standards. No distinction in law exists between licensed fishermen vendors and non-fishermen vendors in this area.

(2) Where vending is occurring on federal facilities, the federal government should ensure that use of the facilities corresponds to provincial conditions respecting fish sales. To the extent that federal facilities are maintained to provide a service to fishermen, the use of these facilities by non-fishermen to sell fish may be inappropriate.

CHAPTER 6:

CONCLUSIONS AND RECOMMENDATIONS

In this chapter we draw conclusions based on the descriptions and analyses in the preceding chapters, and present our recommendations on the roles and responsibilities of the Province and the different provincial Ministries in the regulation of fish buyers and vendors. Included in our recommendations are a number of proposals to change the regulatory framework, as well as consideration of the costs of services recommended and possible cost recovery opportunities.

In drawing our conclusions and formulating our recommendations we deal first with the buying sector and later in the chapter with the fishermen vending sector.

The Buying Sector

The Role of the Province in Regulating Buyers

In Chapter 2 we reviewed the constitutional principles governing jurisdiction over various aspects of the fisheries, and concluded that the province does have the jurisdiction to regulate the activities of fish buyers within provincial boundaries. As in most constitutional matters, however, questions about jurisdiction are never simple. Because the majority of fish harvested in BC are destined for export, the federal government has the jurisdiction to impose export restrictions and conditions that also affect the buying sector.

In Chapter 4 we looked at the various rationales from the provincial perspective for licensing fish buying activities, and for inspecting and enforcing regulatory requirements in this area. We found that the licensing scheme generated valuable data on sector participants, and was the mechanism through which the mandatory sales slip reporting system is implemented. Both licensing and data collection were felt to be important if the provincial government is to respond to the changing structure and dynamics of the fishing industry currently being stimulated by

changing consumption patterns, markets, and resource management practices. In addition, inspection and enforcement of regulatory requirements respecting buying activities was found to be an important aspect of the regulatory scheme in light of the public health hazards and the spillover effects of product safety and product quality problems.

In view of provincial jurisdiction over the buying sector and provincial responsibilities in the area of public health and safety and the administration of commerce, and given the compelling reasons we found for continuing to inspect and enforce regulatory requirements in this area, we recommend:

(1) *The Province should continue to license, inspect, and enforce requirements for the buying sector.*

Having concluded that the Province has a legitimate role to play in regulating the buying sector, we also feel that the regulatory framework for governing buying activities could be improved upon. The next section outlines our ideas in this regard.

The Regulatory Scheme for Fish Buyers

During the course of this study we found a number of ambiguities and difficulties in the legislation that tend to create more confusion than they resolve. An example is the use of the word "unwholesome" in the *Fish Inspection Act*. As currently defined, the concept embraces notions of product safety and product quality. In the context of fish buying activities, the confusion is perhaps understandable since, although product safety and product quality are separate issues, provincial concern in both areas starts when the fish are landed and continues through the handling, transportation, processing, and retailing of the product. However, both the rationale for provincial concern and the resulting implications in terms of assignment of administrative responsibilities for the program suggest that the distinction between product safety and product quality may be an important one.

It is clear that provincial responsibilities in the area of public health and safety justify an ongoing role for the Province in the regulation of product safety. Moreover, in light of the considerable public health hazards associated with the

consumption of shellfish, particularly bi-valve molluscs, the Province may wish to consider placing special restrictions on buyers who deal in shellfish. In Chapter 5 we suggest a number of options available to the Province to control the illegal sale of unprocessed bi-valve molluscs. Accordingly, we recommend:

(2) *The Province, in close consultation with the buying sector, should explore the desirability of establishing a shellfish buyers licensing scheme.*

The establishment of a shellfish buyers licensing scheme, as opposed to the current system of decals applied to a single fish buyers license, would allow for different regulations to apply to buyers of shellfish and finfish. This would be an important prerequisite to implementing options we recommend in Chapter 5 to address illegal sales of bi-valve molluscs that are based on distinguishing shellfish buyers from other buyers. Consideration should also be given to whether a shellfish license would apply to all shellfish, bi-valve molluscs only, or some other subgroup of shellfish.

The Provincial role with respect to regulation of product quality is not as clear, primarily because of the many factors involved in the concept of product quality. In talking about product quality we found ourselves discussing standards designed to prevent product deterioration, standards designed to prevent consumer fraud, and grading standards. The current legislative scheme gives the Province a clear mandate with respect to all three types of product quality concerns, however regulations exist only with respect to the first two. The extent of provincial involvement in the imposition of government grading standards is largely a matter of government policy and available resources. We found that while most individuals supported the idea of government standards to protect against product deterioration and consumer fraud, there was less consensus on the merit of provincial intervention in the area of grading standards. Provincial policy respecting the imposition of government grading standards in food products industries is not entirely consistent. In view of the growing importance of all aspects of product quality to the development and expansion of the fishing industry, we recommend:

(3) *The Province, in close consultation with the buying/processing sector, review the question of product quality and explore the nature and extent of continuing government*

Involvement in the areas of product deterioration and consumer fraud, and future involvement in the area of grading standards.

This issue has already been identified by the Ministry of Agriculture and Fisheries for further study, and is stated as a recommendation here to emphasize the importance of reaching a clearer consensus on this issue.

It should be emphasized that, as things currently stand, the Province does have a legislative mandate in this area of product quality having to do with standards respecting product deterioration and protection against consumer fraud, and therefore has responsibility for the inspection of fish buying stations to ensure compliance with structural and operational standards.

The legislative scheme supporting the licensing, inspection, and enforcement of fish buyers is characterized by ambiguous and often redundant provisions. Fish processors, buyers, and vendors are currently licensed under authority of the *Fisheries Act*, while structural and operational requirements for these licensed facilities fall under the authority of the *Fish Inspection Act*. The link between licenses and standards affecting buyers is a matter mostly of Ministry policy, since by law compliance with the standards is not a condition of the license, merely a reason for not issuing it in the first place. Consolidating provisions affecting the buying/processing sector makes the intent of the legislative scheme clearer, as well as providing the Province with the ability, securely founded in law, to cancel or suspend license privileges based on compliance with all important aspects of the regulatory scheme. Accordingly, we recommend:

(4) The Province should take the necessary steps to consolidate all licensing and regulatory provisions affecting buyers, processors, and vendors.

Consolidation should be designed to remove the considerable redundancies presently existing throughout the regulations, and to remove those sections of the existing regulations where there seems to be no practical application in industry today. Wording changes are also required to make definitions more readily understood.

Inspection and Enforcement of Fish Buying Activities

We were told repeatedly during the course of the study that the inspection and enforcement of regulations affecting fish buyers was uneven. While all buyers are permitted to process fish in that they are permitted to "eviscerate", shore stations and barges seem to be subject to more rigorous enforcement of processing standards than are truck buyers. The reasons for uneven enforcement are unclear. The situation may result from inconsistencies between provincial and federal inspectors or from the simple fact that truck buyers are mobile while shore stations stay in one place. Whatever the reason, inconsistent and inequitable enforcement of the *Fish Inspection Act* and regulations is one of the most important issues in the buying sector currently facing the provincial government.

(5) The provincial government should state its intentions to redress inequitable enforcement of fish buyer regulations, and act on them quickly.

The problems seem to fall into three categories: (1) lack of coordination between provincial and federal inspectors; (2) insufficient enforcement resources to do the job; and (3) practical realities such as the mobility of truck buyers that make enforcement of regulations prohibitively expensive.

In the first case, consistent and equitable enforcement requires coordination of both design of regulations and their enforcement. The province alone cannot ensure consistent enforcement because the federal government has jurisdiction over certain aspects of buying activities, such as deliveries to federally registered processing plants, and federal officers are empowered to enforce provincial regulations.

(6) Officials of the Ministry of Agriculture and Fisheries should meet with their counterparts in the Department of Fisheries and Oceans to discuss consistent and equitable enforcement of the Fish Inspection Acts of the two governments. A written policy should be developed and implemented to ensure that enforcement of these statutes and regulations by provincial and federal officers in the future is fair and equitable.

The second and third problems are closely related. The second problem could be addressed by increasing resources devoted to enforcing regulations on truck buyers. A practical problem in this regard is the mobility of truck buyers and the constraints on public sector enforcement resources. Clearly, there is merit to continuing to permit evisceration of fish by fish buyers since early evisceration protects against rapid product deterioration during the post-harvest phase. However, as the third problem suggests, it may be impractical to consider enforcing processing standards on truck buyers because of their mobility. In this case, consideration would have to be given to limiting truck buyers to transporting fish while allowing shore stations and barges to continue to eviscerate fish as part of their buying activities. This would require the development of a more sophisticated buyer licensing system that would differentiate between buyers who are limited to handling and transporting and those who are allowed to do minimal processing activities.

Given current pressure on public resources and the difficulty of justifying incremental expenditures, we recommend:

(7) *The Ministry of Agriculture and Fisheries give serious consideration to disallowing truck buyers from engaging in activities that are currently construed as processing fish (e.g., eviscerating). This would require that the buyer licensing system allow "transhippers" to be distinguished from "buyers" as currently defined in the legislation (i.e., who are allowed to eviscerate fish).*

The Province should also take a close look at the scope of current provisions and definitions in the legislation. We found that the buying regulations are not evenly applied to all individuals engaged in handling and transporting fish. For instance, commercial fishermen who transport their own fish to processors or market are not currently required to hold a valid buyers license. Further, people transporting fish from fish farms to processors do not require a buying license. While this makes sense in terms of data collection -- a fish slip will eventually be filled out by the first recipient of these fish, which in most cases is a processor -- there is no apparent reason for this distinction in terms of product safety or product quality. As we concluded in Chapter 4, one of the most important reasons for the buyers licensing scheme is the need to ensure public health and safety. Since we have

concluded that the Province should continue to license and regulate buying activities and recommended earlier the creation of a transporters license, it makes sense to require all persons who transport fish to comply with the same handling, storage, and transportation standards. Consequently, we recommend:

(8) *The Province broaden the scope of regulation of buying activities to include all persons who engage in handling and transporting fish. Application of these provisions should not differentiate between wild and cultured fish.*

On the issue of enforcement of provincial reporting requirements, the federal government has argued that the Province has the responsibility of ensuring the accuracy of data on sales slips. This issue is a difficult one to deal with since the extent of the problem itself is unclear and because the sales slip system, while authorized under provincial legislation, was designed to serve primarily federal needs, although it also provides data of interest to the province. What is clear is that the federal government continues to rely extensively on this mandatory reporting system for landings information in the salmon fishery.

Under the current arrangement, the Province collects production statistics through annual reports submitted by processors and the federal government collects sales slips submitted by buyers, vendors, processors, and commercial fishermen. This arrangement seems to be working smoothly and has the effect of distributing the costs of the system between those agencies who benefit from it. Most people we interviewed in the study did not realize that the requirement to submit sales slips stems from provincial fisheries legislation. Consequently, we find it difficult to recommend any change to the current arrangements for collecting data. We therefore recommend:

(9) *The Province continue to require the submission of sales slips, providing the current cooperative arrangement with the federal government respecting collection of these data remains in effect.*

Both the Province and the federal government have a clear interest in these records of transactions. What is not clear is how accurate are the data collected through sales slips. In this regard, provincial legislation provides for the submission

of annual production reports from all license holders, including buyers, although this provision is currently enforced only for processors. As a way of verifying the accuracy of sales slip reporting, the Province may wish to enforce the requirement for buyers to submit detailed annual production reports which can then be used to cross-check data on sales slips. We therefore recommend:

(10) The Province consider the merit of collecting annual production reports from buyers.

We have not talked here about the impact that a federal mandatory catch reporting system would have on provincial reporting requirements. While such a scheme may face difficulties in light of the wording of section 48 of the federal *Fisheries Act,* should such a scheme be implemented by the federal government, the Province would wish to review its current reporting scheme with a view to redesigning it to generate only those data of primary interest to the provincial government.

Assignment of Administrative Responsibilities for the Buying Sector

The legislative definition of "unwholesome" fish causes some difficulty in assigning administrative roles and responsibilities between provincial Ministries. At first glance, product safety and the attendant concerns for public health and safety seem to fall under the mandate of the Ministry of Health; product quality concerns, on the other hand, seem to be matters more directly of interest to the Ministry of Agriculture and Fisheries. In practical terms, however, this distinction is not useful since for a particular species there may be both public health risks and product quality concerns. Poor handling practices will, in most instances, affect product quality, but in some instances will also affect product safety. Moreover, buyers handle any number of species for which concerns related to both product safety and product quality arise.

We have concluded that the existing legislative framework and the practicalities of regulating buying activities do not lend themselves to a functional division of inspection and enforcement responsibilities. In addition, it would be difficult to recommend a functional division of responsibility in this area since it would lead to duplication of inspection resources between the two Ministries. We feel that a better solution is to divide responsibilities between the Ministries on the basis of

whether the fish is being transported or processed. To the extent that buyers are allowed to continue to engage in minor processing activities, there may be some duplication and confusion, but this is not a significant consideration. We recommend, therefore:

> *(11) The Ministry of Agriculture and Fisheries should continue to license fish buyers, and to inspect and enforce regulations respecting buying activities.*

To avoid duplication of effort, this division of responsibilities should be based on an explicit agreement between the two Ministries not to limit their inspection activities to the primary purposes relevant to each.

There is another compelling reason for making this recommendation. In talking about the potential public health hazards that arise due to the consumption of contaminated bi-valve molluscs, it is clear that illegal harvesting activity is the source of many problems in this area rather than post-harvest activities. In this sense, the detection of product safety problems in the post-harvest phase is probably best kept within the Ministry responsible for the fisheries resource and industry participants.

Costs of Services and Who Should Pay for Them

The primary beneficiary of licensing and regulating fish buyers is the fishing industry itself. The job is not currently being done well because uneven inspection and enforcement has resulted in differential application of regulations and unfair competition. The industry will benefit from improved enforcement by eliminating this inequitable situation.

The options broadly speaking are to increase enforcement resources or redesign the licensing and regulatory system to make it more sophisticated. The latter option, however, will not reduce the need for enforcement resources and may increase it. It makes sense, therefore, to investigate ways of increasing and improving enforcement of regulations: increasing license fees is one option. Since public health and safety is an important purpose of the regulatory system, however, there is a strong argument for not recovering all costs from industry.

(12) *License fees for buyers (transporters) licenses should be increased to make available more inspection and enforcement resources. Full cost recovery is not justified but significant increases could be implemented as long as program delivery improves as a result.*

This would best be done in the context of a full review of license fees applicable to buyers, processors, and vendors.

The Vending Sector

The Role of the Province in Regulating Fishermen Vendors

The rationale for licensing fishermen vendors is different from the rationale for licensing fish buyers. A clear understanding of the differences is important in understanding why we reach a different set of conclusions and recommendations about the provincial role regarding fishermen vendors.

With buyers, the need to license this sector relates not only to the need to have data on fish buying activities, but also to provide a way of tracing fish to the point of origin where problems with the product show up in the post-harvest phase. This last feature of the licensing scheme respecting buyers is important in light of serious and possibly growing concerns respecting product safety and the link in many cases to illegal harvesting activities.

In Chapter 4, we found that the primary purpose of licensing fishermen vendors is data collection. However, it is not clear that the vending license offers any additional benefits to provincial authorities in terms of controlling illegal sales that give rise to product safety and product quality concerns.

While the data generated by this reporting system do complete information on total landings, the volume of fish accounted in this way is insignificant by comparison to total landings. While the Province does have some economic interest in fisheries management, the expenditure of provincial resources on the administration of this system is questionable.

With buyers it was important to the Province to have a licensing system as a way of identifying industry participants and providing a means of tracing fish in the post-harvest phase to their point of origin. This does not appear to be a consideration with vendors. While product safety and product quality concerns respecting fish sold to the public is an often stated concern of industry and government officials alike, the problem does not relate to illegal harvesting activities, but to the failure of individuals vending or selling fish to the public to comply with provincial standards respecting product deterioration and consumer fraud. Point of origin is only important in the context of the consumer fraud issue. It should be noted, however, that nothing in the legislation currently prohibits dockside selling by non-fishermen even where the public assumes that the product is being purchased direct from a fisherman.

If the argument could be made that there is a sound reason for licensing vendor activities from the point of view of assisting in enforcement of provincial product safety and product quality standards, then there is no logical reason for not extending the current licensing provisions to all individuals who vend or sell fish dockside. We do not find this to be a persuasive argument.

Moreover, we can see no strong rationale for the Province to continue administering a licensing scheme that is not directly linked to the provincial mandate regarding administration of commerce. Consequently, we recommend:

> *(13) The Provincial government should discontinue licensing fishermen vending.*

This implies that the federal government will have to find alternative means of collecting data on over-the-side sales. If alternative collection of these data is not feasible and if the Province decides to continue licensing fishermen vendors and require sales slip reporting on behalf of the federal government, the Province may wish to explore with the federal government ways in which to recover the costs of this reporting system, since the major beneficiary of these data is the federal government. Our interviews with fishermen vendors suggest that a substantial number of vendors do not currently comply with provincial requirements to purchase a license; the extent to which reporting requirements are complied with is unknown. This suggests that a decision on the part of the Province to continue to

license fishermen vendors will require more diligent enforcement of the law in this area. Given current resource contraints, increased enforcement costs would be acceptable only if they are shared by those who benefit from the service, in this case the federal government.

Irrespective of whether the licensing scheme respecting fishermen vendors is retained by the Province, the Province does appear to have an ongoing inspection and enforcement role with respect to those regulations dealing with retail fish sales. Our review of the issues in this area suggests that concerns with respect to product quality frequently arise with respect to dockside sales. By product quality, we mean concerns about product deterioration and consumer fraud. In addition, non-compliance with the standards respecting the processing of bi-valve molluscs would give rise to serious public health and safety concerns if these products were being sold directly to the public. We find there are compelling reasons for recommending:

(14) The Province continue to inspect and enforce retail sale requirements with respect to dockside sales.

The term "retail fish outlet" is not defined in provincial fisheries legislation, and creates some confusion regarding whether the standards set out in the regulations about retail fish outlets apply to dockside sales. While the traditional view of fisheries officials is that the standards do apply, this view is not held by all officials in the provincial government. In our view, the regulations should apply to dockside sales, but to avoid confusion we recommend that the Province create a definition for retail fish outlet, one that would clearly include dockside sales, in the course of consolidating the legislation as earlier recommended. An alternative would be to create a separate regulation dealing specificially with dockside sales. This approach has some merit, since it would appear that some of the provisions in the regulations relating to retail fish outlets may not be entirely appropriate or adequate to the concerns that arise with respect to dockside fish sales. Therefore, we recommend:

(15) The Province review the regulations respecting retail fish outlets to clarify applicability and appropriateness of the regulation in terms of dockside sales.

Assignment of Responsibility for Fish Vending

The regulation of fish vendors is best seen as part of the responsibilities of municipal health units in carrying out the requirements of their mandate over retail fish outlets. There seems to be a role for both the Health and Agriculture and Fisheries Ministries because of the public health and product quality concerns. Since the former is the more important issue, municipal health units should be given the responsibility to inspect all fish vendors including itinerant vendors selling within municipal boundaries. To facilitate achieving all relevant objectives, Ministry of Agriculture and Fisheries and municipal health officials should meet to conclude an agreement whereby municipal health inspectors would cover off product quality concerns.

(16) *Responsibility for inspecting those who sell fish to the general public, including fishermen vendors, should be placed on municipal health units. To ensure that concerns of the Ministry of Agriculture and Fisheries are addressed without duplication of effort, officials of the two agencies should meet to establish an explicit policy on activities to be undertaken.*

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APPENDIX A

JURISDICTION AND ADMINISTRATIVE PRACTICE REGARDING FISH BUYERS & VENDORS

LEVEL OF ACTIVITY	JURISDICTION	LEGISLATIVE AUTHORITY	ADMINISTRATIVE PRACTICE
Harvesting (Allocation of Resource)	Divided jurisdiction. Provincial, in non-tidal waters due to ownership of resource; matter of private property. Federal, in tidal waters due to control of public right to fishery; acting in fiduciary capacity.	Licensing of freshwater commercial, scientific, educational fisheries authorized by BC Fisheries Act. Licensing of freshwater recreational fishing authorized by BC Wildlife Act. Licensing of marine plant & oyster harvesting authorized by BC Fisheries Act. Licensing of marine fisheries, salmon fisheries, & Indian food fisheries authorized by Fisheries Act (Cda) & regulations.	Province issues all fishing licenses in non-tidal waters, except those respecting salmon & Indian food fish; and for marine plants & oysters in tidal waters. DFO issues all fishing licenses in tidal waters & issues salmon & Indian food licenses.
	Constitutional Issues: Authority of province to regulate marine plant harvesting in tidal waters; authority of DFO to license salmon and Indian food fisheries in non-tidal waters.		
Conservation & Protection	Primarily Federal. Federal, in all waters; stems from constitutional jurisdiction over "seacoast & inland fisheries", Provincial, in non-tidal waters to protect property interest in fisheries; must be consistent with federal conservation requirements.	Regulation of fisheries for purposes of conservation & protection authorized by the Fisheries Act (Cda) & regulations.	Administrative authority delegated to Province respecting non-tidal waters (exception is management of salmon fisheries in non-tidal waters -- retained by DFO), and respecting steelhead and cutthroat trout. Delegation enables province to administer federal regulations. DFO retains administrative responsibility for enforcing federal regulations in tidal waters.

LEVEL OF ACTIVITY	JURISDICTION	LEGISLATIVE AUTHORITY	ADMINISTRATIVE PRACTICE
Handling & Transportation	Primarily Provincial, but some aspects fall within Federal jurisdiction. Provincial, over all handling & transportation within provincial boundaries; stems from power over "property & civil rights". Federal, over fish until landed -- control of activity viewed as necessarily incidental to conservation mandate; stems from power over "seacoast & inland fisheries". Federal, over landed fish destined for export markets; stems from power over "trade & commerce".	Standards governing vessels set out in Sch. III Fish Inspection Regs (Cda) & Sch. C & E, Part I Fish Inspection Regs (BC). Standards governing vehicles set out in Sch V of the Fish Inspection Regs (Cda) & Sch. E, Part II of the Fish Inspection Regs (BC). Standards governing shore stations and barges set out in Sch E. Part III Fish Inspection Regs (BC).	Agriculture & Fisheries licenses fish buying stations (packing vessels, shore stations, barges, and vehicles); also conducts inspections. DFO inspects, certifies (fish holds), & licenses all fishing & packing vessels. DFO inspects vehicles transporting fish to federally registered processors.
Processing	Primarily Provincial, but some aspects fall within Federal jurisdiction. Provincial, over all facilities; stems from constitutional power over property rights & over matters of local or private nature. Federal, over facilities that export fish & fish products; stems from constitutional power over international & inter-provincial trade & commerce.	Licensing of fish processors authorized by Fisheries Act (BC) & Fish Inspection Act (Cda). Structural & operational standards set out in Fish Inspection Act (BC) & Fish Inspection Act (Cda). Processing requirements for bi-valve molluscs set out in Fish Inspection Regs (BC).	Agriculture & Fisheries issues provincial processors license. Ministry of Health inspects plants prior to issuing provincial license. DFO inspects & registers processors who export. DFO assumes all responsibility for inspecting bi-valve mollusc processors. DFO issues export certification after inspection of fish & fish products (note: fishermen/packer exemption.)

LEVEL OF ACTIVITY	JURISDICTION	LEGISLATIVE AUTHORITY	ADMINISTRATIVE PRACTICE
Wholesale/Retail	Primarily Provincial, but some aspects fall within Federal jurisdiction. Provincial, over all retail transactions within province -- including public health & product safety aspects, and product quality aspects; stems from power over "property & civil rights", Federal, over aspects relating to consumer fraud, to the use of federal facilities; possibly over health if national aspect to problem or amounts to emergency; stems from power over "criminal law".	Fishermen vending licenses authorized by Fisheries Act (BC). Structural & operational requirements for fish retail outlets set out in Sch. F, Fish Inspection Regs (BC). Sanitation standards set out in BC Health Act & municipal by-laws. Labelling & packaging requirements set out in Sch F, Fish Inspection Regs (BC) & in federal legislation. Prohibition re. sale of fish found in Federal & Provincial legislation.	Agriculture & Fisheries issues fishermen vending licenses and inspect vending operations (not D vessels). Ministry of Health grants permits to restaurants. Municipal health units & Ministry of Health inspect retail outlets & restaurants; respond to public health hazards. Consumer & Corporate Affairs enforces federal & provincial (ex-officio) labelling & packaging requirements at retail outlets; enforces federal consumer protection requirements. DFO manages use of government docks, including use by itinerant vendors; enforces illegal sale of fish prohibitions (i.e., undersize, unprocessed bi-valves, sport caught or Indian food fish). Health & Welfare Canada inspects re. labelling for protection of health & safety of vacuum packed salmon.

APPENDIX B

Offenses Relating to Fish Buying and Vending

Section	Infraction	Maximum Penalty
Fisheries Act (BC)		
13(1)	Process fish without a license.	At least $500, but not more than $10,000; s. 25(2)
13(2)	Operate fish buying station without a license.	At least $25, but not more than $1,000; s. 25(3)
13(4)	Fishermen who sell fish to public without a license.	At least $25, but not more than $1,000; s. 25(3)
20(1)	Buyer/processor who fails to submit annual report of operations.	At least $25, but not more than $1,000; s. 25(3)
20(5)	Fisherman vendor who fails to produce record of operations.	At least $25, but not more than $1,000; s. 25(3)
23	Purchase of fish from person whose license is unpaid.	At least $25, but not more than $1,000; 2. 25(3)
Fisheries Act Regulations (BC)		
18(1)	No fish buyers license on premises.	At least $25, but not more than $1,000; s. 25(3) Fisheries Act. Fish subject to forfeiture upon conviction; s. 25(5) Fisheries Act. Minister may suspend or cancel license; s. 18 Fisheries Act.
18(2)	Failure to produce fish buyers license.	As above.
19(1)	Failure by fisherman vendor to record all fish intended for sale.	As above.
19(2)	Failure by fisherman vendor to submit record of sales to DFO.	As above.
20	Failure by processor to keep record of transactions with fish suppliers and to submit record to DFO.	As above.

Section	Infraction	Maximum Penalty
Fish Inspection Act (BC)		
9(1)	Altering or destroying inspection certificate.	At least $50 or 2 months or both, and not more than $500 or 6 months or both; s. 9(2). Product detention action; s.8.
9(3)	Sale of unwholesome fish.	At least $25 or 3 months or both, and not more than $500 or 6 months or both; s. 9(4). Product detention action; s. 8.
Fish Inspection Regulations (BC)		
5(1)	Processing unwholesome fish.	Maximum fine of $500 or 6 months , or both; s. 9(5). Product detention action; s. 8.
7(4)	Unauthorized disposal of detained fish.	As above.
12(1)	Sale to public of non-processed fish by persons other than fishermen vendors.	As above.
12(1.1)	Sale of unprocessed bi-valve molluscs, unless to fish buyer or processor.	As above.
17	Failure of boats used for fishing or for transporting fish to meet requirements of Schedule C.	As above.
19	Failure to keep conveyance used to transport fish clean.	As above.
20	Failure to handle fish intended for processing as indicated.	As above.
22	Buying fish for resale or for processing without a license, unless for direct retail sale by him.	As above.
24	Sale of fish on premises not meeting Schedule F requirements.	As above.
25(2)	Use of equipment found to be unclean.	As above.
Sch. B	Failure to comply with operating requirements for processing establishments.	As above.
Sch. C.	Failure to comply with requirements for boats used for fishing or transporting fish for processing.	As above.

Section	Infraction	Maximum Penalty
Sch. D.	Failure to comply with requirements for establishments storing frozen fish.	As above.
Sch. E	Failure to comply with requirements for fish buying stations.	As above.
Sch. F	Failure to comply with requirements for retail fish outlets.	As above.
BC Fishery (General) Regulations - Canada		
4(1)	Fishing without a license.	
5	Sale of fish other than fish caught lawfully under authority of commercial fishing license.	
27(4)	Possession of Indian food fish by person other than an Indian.	
27(5)	Sale of Indian food fish.	
32(1)	Failure by Master of fishing vessel to keep a fishing log.	
32(2)	Failure to produce log book.	